BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Potential Benefits Of Federal Magistrates System Can Be Better Realized

The magistrates system has become an important and integral part of the Federal judicial system and has helped to reduce the workload on Federal judges. However, actions could be taken to better utilize magistrates which would further reduce the burden on district court judges. GAO recommends that the Judicial Conference of the United States:

--Encourage, through the issuance of a policy statement, all district courts to develop a comprehensive plan within their district for using magistrates more effectively and efficiently.

--Disseminate to all districts on a more formal basis the criteria for approving requests for new magistrate positions.

--Provide additional guidance to the district courts in implementing the civil trial provision of the Federal Magistrates Act.

Further, GAO recommends that the Congress amend the Federal Magistrates Act to provide that the designation of a magistrate to conduct proceedings does not preclude a district judge from exercising jurisdiction over any case.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses actions necessary to enhance the effectiveness of the Federal magistrates system. In chapter 3, we recommend that the Judicial Conference more actively support the magistrates system by encouraging expanded use of magistrates and more organized district approaches to magistrate utilization. Also, we have made recommendations to the Congress to modify the Federal Magistrates Act to eliminate technical barriers that are impeding the use of magistrates by district courts.

Copies of this report are being sent to the Director, Office of Management and Budget; the Chairmen, House and Senate Judiciary Committees; the Chief Justice of the United States; the Director, Administrative Office of the United States Courts; the Chairman, Judicial Conference Committee on the Administration of the Federal Magistrates System; and the chief judge of each Federal district court.

Charles A. Bowsher

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

POTENTIAL BENEFITS OF FEDERAL MAGISTRATES SYSTEM CAN BE BETTER REALIZED

D I G E S T

GAO's review in 11 Federal district courts showed that despite increasing productivity, district courts civil case backlogs continue to rise. Therefore, GAO recommends that the Judicial Conference, the policymaking body of the judiciary, take a more active role in promoting the greater use of magistrates to alleviate the burden of increased workload in district courts.

The U.S. Magistrates System was created by the Federal Magistrates Act of 1968 (Public Law 90-578) to improve the Federal judicial system by easing the workload on Federal judges and providing the public with a speedier resolution of litigative matters. Magistrates are subordinate district court officials empowered to perform many of the duties previously performed only by district judges. The magistrates have made a substantial contribution to the movement of cases in Federal district courts which is demonstrated by the dramatic increase in district court production--368 civil cases terminated per judge for the year ended June 30, 1982, compared to only 201 for the year ended June 30, 1970. However, the courts could make even greater use of magistrates if certain obstacles were eliminated.

MAGISTRATES COULD FURTHER EASE BURDEN ON DISTRICT COURT JUDGES

The magistrates system has evolved differently in individual districts resulting in duties and roles of individual magistrates varying among and within districts. The magistrates system could help to alleviate the burden of increased workload in district courts if more information was disseminated among district

courts on uses being made of magistrates, districts better planned for the use of magistrates, and district courts understood the criteria for approving magistrate positions. (See pp. 14 to 34.)

Expanded use of magistrates needed--GAO found that magistrates can effectively and efficiently perform all duties authorized by law. In some districts, magistrates perform a wide variety of duties; other districts limit their use. These limitations are based on the personal preferences and perceptions of judges, the belief that magistrates cannot handle many matters, and a lack of information on the extent magistrates are being used successfully by other districts. GAO believes that if more information was disseminated among district courts of the uses being made of magistrates and experimentation with novel uses was encouraged that districts that are limiting the use of magistrates would have a better appreciation of the role magistrates can play. (See pp. 18 to 25.)

Better planning for the use of magistrates needed--GAO found that plans for use of magistrates do not exist in all districts, as envisioned by the Congress. In district courts without plans magistrates have been assigned duties without regard for overall district needs. Better comprehensive planning which considers the overall efficiency and effectiveness of the use of magistrates is needed if magistrates are to more fully contribute to the improved movement of cases within their districts. These plans should consider the total needs of the district court including the types of cases, overall workload, and the present use of magistrates. (See pp. 26 and 27.)

System for establishing magistrate positions needs improvement--GAO found that the current system for approving new magistrate positions is based on sound criteria. However, it is not as effective as it might be in identifying

opportunities to establish new positions or to obtain approval for them. The system relies on the unsolicited initiation of requests for new positions by individual district courts, however, the courts are not adequately informed on the criteria used for approval. (See pp. 28 to 32.)

CHANGES NEEDED TO FULLY ACHIEVE CIVIL TRIAL PROVISIONS OF THE MAGISTRATES ACT

Existing law provides that upon the consent of the litigants, magistrates who have been designated by the district court can conduct and enter judgments in civil matters. This was intended to lighten the judges' burdens while improving the public's access to the court. Different interpretations and applications of the act's provisions have led to its inconsistent implementation.

Magistrates' jurisdiction over civil trials has created a problem--Officials in two of the 11 districts included in GAO's review had designated no magistrates to exercise civil trial jurisdiction because they believed the language of the Magistrates Act hinders, or even prohibits, judges from assuming jurisdiction over cases in which the parties have consented to magistrates' jurisdiction. Officials in these districts were concerned that they would lose control over individual cases. Thus, they believed they would have a problem in fully managing the district's case workload. Because of the varying interpretation of the act and to increase the use of magistrates presiding over civil trials, GAO believes that the act needs to be clarified so that the designation of a magistrate does not preclude a district judge's jurisdiction over a case. (See pp. 37 to 39.)

Involvement of judges in advising litigants of their opportunities is inconsistent--Judges and magistrates are forbidden by the Federal Magistrates Act from persuading or inducing parties to consent to trial before a magistrate. Judges have interpreted this section differently and wide variations of judicial involvement exist in the process of notifying the litigant of his/her "right to consent" to trial by a magistrate. (See pp. 39 and 40.)

Followup enhances the consent to trial notification process--The Federal Magistrates Act charges the district court clerk with the responsibility for notifying parties of their opportunity to have a magistrate hear and decide their case. Nine of the 11 district courts GAO visited have designated magistrates to conduct civil trials. Even though all nine districts initially notify litigants of their opportunity to have a magistrate hear litigants' cases, GAO found that only one district court actively followed up when consent was not obtained from the litigants. As a result, this district was obtaining a greater number of consents for magistrates to hear cases. (See pp. 40 and 41.)

RECOMMENDATION TO THE CONGRESS

GAO recommends that the Congress amend the act to provide that the designation of a magistrate to conduct proceedings does not preclude a district judge from exercising jurisdiction over any case. (See p. 43.)

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

GAO recommends that the Judicial Conference:

--Encourage district courts and judges who restrict the use of magistrates to explore methods to increase the use of their magistrates. To accomplish this the Conference

should improve the system for disseminating information regarding the experiences in other court districts on the use being made of magistrates and make it more formal and routinely available to all district courts.

--Encourage, through the issuance of a policy statement, all district courts to analyze their current use of magistrates and develop within their respective district a comprehensive plan for using magistrates in the most effective and efficient manner.

--More formally disseminate to all district courts the criteria used in evaluating and approving applications for new full-time magistrate positions. Further, the Conference and the Administrative Office should rely less exclusively on court-initiated requests and should identify those courts that should be encouraged to request additional magistrate positions. (See p. 34.)

GAO also recommends that in order to make the system more consistent and increase the effectiveness of the civil trial provisions of the act, the Judicial Conference should provide additional guidance to the district courts in implementing the civil trial provision of the Magistrates Act. Further, the Conference should identify for clerks of the court methods for notifying litigants of their opportunities to have a magistrate hear their cases, including follow up procedures. (See p. 43.)

AGENCY COMMENTS AND GAO'S EVALUATION

The Judicial Conference's Magistrates Committee, the Administrative Office of the U.S. Courts, and 10 of the 11 Federal district courts GAO visited commented on the report. These entities generally agreed with the

report's findings, conclusions and recommendations. The GAO recommendations that encourage the development of comprehensive district plans and that the Congress revise the language of the Federal Magistrates Act evoked some discussion and disagreement.

One district court disagreed with GAO's concept of a comprehensive district plan for use of magistrates because it did not believe such an approach would be feasible in district courts with more than one judge and more than one magistrate. GAO does not believe the concept of a comprehensive plan is invalid in such a district. In fact, GAO believes it is even more important for such a district to periodically review and analyze its workload and determine the most advantageous approach to using magistrates. Further, the judges, in such courts must work together and agree on what types of duties magistrates will be assigned so that matters that magistrates cannot handle as efficiently as judges are retained by judges, thereby, enabling magistrates to better serve all the court's judges more fully. (See pp. 34 and 35.)

GAO's original legislative proposal called for the district judges to show "good cause" why they retained control over a case even though the litigants had consented to have a magistrate hear the case. In this regard, the Magistrates Committee, Administrative Office and one district court agreed that a legislative change was necessary but believed a change proposed by the Judicial Conference was more appropriate. Another district said it did not believe a legislative change was necessary but would not object to such a change. After considering their views, GAO revised its recommendation by eliminating the phrase "good cause" but retained the concept that litigants should be told the reason for not allowing the magistrates to handle the case. GAO believes that such notice would help to maintain public

confidence in the magistrates system by apprising the litigants why a judge plans to handle the case. (See pp. 43 and 44.)

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GAO initiated its review to determine whether magistrates (1) were being used efficiently and effectively and (2) could be utilized to a greater extent to assist the Federal judicial system. To accomplish this, GAO performed its work at 11 Federal district courts--the central and southern districts of California; the eastern district of Louisiana; the northern and southern districts of Ohio; and the districts of Connecticut, Maryland, Massachusetts, Oregon, Rhode Island, and the District of Columbia. (See pp. 4 and 5.)

Contents

ABBREVIATIONS

GAO	General Accounting Office
U.S.C.	United States Code

CHAPTER 1

INTRODUCTION

The position of United States magistrate was created by the Congress in 1968 to improve the Federal judicial system and to help alleviate the burden of increasing workload and backlogs on the U.S. district courts and judges. In October 1982, the 94 district courts had 515 authorized district judge positions and 223 authorized full-time magistrate positions. In fiscal year 1982 the magistrates system cost about $31 million to operate.

Because of the interest and concern on the part of the Congress, the judiciary, and the public, we reviewed the operations of the magistrates system to determine its impact on the overall Federal judicial system. We conducted our review at 11 of the 94 Federal district courts [1/] and reviewed studies of the magistrates system conducted by the Judicial Conference of the United States, the Federal Bar Association, and other private parties. (See p. 4 for detailed information.)

THE OBJECTIVES OF THE MAGISTRATES SYSTEM

The Federal Magistrates Act of 1968 [2/] reformed the U.S. district court system by abolishing the U.S. commissioner position and creating in its place an upgraded judicial officer known as a U.S. magistrate. During the intervening years the Congress has modified the system to deal with the evolving needs of the judiciary. The overall objectives of the system are:

--Increase the overall efficiency of the Federal judiciary by relieving the district judges of some of their burdens.

1/Central (Los Angeles) and Southern (San Diego) California; Connecticut; District of Columbia; Eastern Louisiana (New Orleans); Maryland; Massachusetts; Northern (Cleveland) and Southern (Cincinnati) Ohio; Oregon; and Rhode Island.

2/Public Law 90-578, 82 Stat. 1107 (1968) (codified as amended at 28 U.S.C. §§604, 631-639 and 18 U.S.C. §§3060, 3401-3402 (Supp. III 1979).

--Provide a means for a speedier resolution of certain criminal matters.

--Perform various judicial duties under the supervision of the district courts in order to assist in handling an ever-increasing caseload.

--Provide district judges more time to preside at the trial of cases.

--Increase the time available to judges for the careful and unhurried performance of their vital and traditional adjudicatory duties.

--Improve access to the Federal courts for the American public, especially the less-advantaged.

--Provide a supplementary judicial power designed to meet the ebb and flow of the demands made on the Federal judiciary.

--Create a vehicle by which litigants can consent, freely and voluntarily, to a less formal, more rapid, and less expensive means of resolving civil controversies.

A discussion of the magistrates system and the services it provides is contained in chapter 2.

ADMINISTRATIVE STRUCTURE OF THE JUDICIARY AND ITS IMPACT ON THE MAGISTRATES

The judicial branch of the Government has three levels of administration--the Judicial Conference of the United States, the judicial councils of the 12 judicial circuits, and the 94 district courts. Associated with this structure is the Administrative Office of the United States Courts. Each level has management responsibilities for the magistrates system.

Judicial Conference of the United States

The Judicial Conference of the United States, the policy-making body of the judiciary, is composed of judges from the various levels of the Federal judiciary, including the Supreme Court, district courts, bankruptcy courts, and courts of appeals. Its interests include court administration, assignment of judges, just determination of litigation, general rules of

practice and procedures, promotion of simplicity in procedures, fairness in administration, and elimination of unjustifiable expense and delay. It also has general responsibility for setting policy for the judiciary, for recommending appropriate legislation, for reviewing rules of practice, and for otherwise supervising the administration of the courts. Except for its direct authority over the Administrative Office, the Conference is not vested with the day-to-day administrative responsibility for the Federal judiciary.

The Conference, with the assistance of the Administrative Office, determines the number, location, and salaries of the magistrate positions, subject to the appropriation of funds by the Congress. The Conference also oversees the operation of the magistrates system by approving rules and regulations promulgated by the Director of the Administrative Office to govern the administration of the system, including operating procedures and statistical reporting requirements. It issues regulations governing conduct and potential conflicts-of-interest of magistrates.

The Conference exercises its responsibilities with regard to the magistrates through its Committee on the Administration of the Federal Magistrates System (hereinafter referred to as the magistrates committee). The magistrates committee is composed of 12 judges--one from each of the Federal circuits--and a single United States magistrate. It meets twice a year and its staff and counsel functions are performed by the Magistrates Division of the Administrative Office.

Judicial councils of the circuits

The United States is divided into 12 judicial circuits, each containing a court of appeals (circuit court) and from 1 to 15 district courts. Each judicial circuit has a judicial council consisting of both appeals and district court judges. The councils are required to meet at least twice a year. Each council considers the quarterly reports on district court activities prepared by the Administrative Office and takes appropriate action. Additionally, the councils promulgate orders to promote the effective and expeditious administration of the courts' business within their respective circuits.

The councils' role in the administration of the magistrates system includes reviewing recommendations for the creation of, and changes in, magistrate positions within their respective circuits; reviewing requests by magistrates for legal

assistant positions; certifying magistrates appointed prior to April 1980 as competent to try civil cases; and approving contractual court reporting services and courtroom and office space for magistrates. The councils also act on any complaints against magistrates. Actual removal or discipline of a magistrate, however, is left to the discretion of the district courts.

U.S. district courts

There are 94 Federal district courts. The Magistrates Act vested the greatest amount of authority over the magistrates and their activities with the district courts and their judges. The judges of each court formulate local rules and orders and generally determine how court activities will be managed. The local rules specify duties to be assigned and the manner for allocating them among the magistrates. The district judges appoint the magistrates and may remove them for specific cause.

Administrative Office of the United States Courts

The Administrative Office of the United States Courts is headed by a Director, who is appointed by the United States Supreme Court. The Director is the administrative officer of the United States courts. Under the supervision and direction of the Judicial Conference, the Director supervises all administrative matters relating to the management of magistrates. Acting through the Magistrates Division, the Director makes recommendations as to the number, type, location, and salary of magistrate positions, prepares legal and administrative manuals for the magistrates system, develops forms, determines staffing levels for magistrates, and otherwise provides necessary support services for the magistrates and their staffs. The Director also gathers, compiles, and evaluates statistical and other information to produce an annual report on the magistrates' workload for use by the Judicial Conference and the Congress.

OBJECTIVES, SCOPE, AND METHODOLOGY

In examining the magistrates system, our objectives were to determine the impact that the magistrates system was having on the judiciary. We conducted our review at the Administrative Office of the United States Courts in Washington, D.C., and at 11 Federal district courts. The court selections were based on caseload size, the number of magistrates, and location. The

judge and magistrate complements of the courts reviewed ranged from 2 to 17 judges and from 1 to 6 full-time magistrates; the totals represented approximately 20 percent of all district judges and magistrates. Furthermore, the district courts selected accounted for 20 percent of all cases filed and 21 percent of all terminated cases by the Federal district courts during the statistical year ended June 30, 1981. We compared the duties of magistrates in each district with those of their counterparts in the other districts as well as with those duties designated by the Congress when creating and modifying the magistrates system. (See page 43 for a more detailed profile of the districts selected.)

To obtain the necessary information, we interviewed judges, magistrates, and clerks of the court to determine how the magistrates system functions. We also interviewed attorneys and local bar association officers regarding their experiences with and observations of the magistrates in meeting congressional objectives. Furthermore, we spoke to representatives of the appropriate circuits courts, the Chairman of the Judicial Conference's Committee on the Administration of the Federal Magistrates System, and staff of the Administrative Office's Magistrates Division.

We examined our prior reports, Administrative Office internal audit reports of district courts' operations, and annual statistical and operational reports prepared by the Administrative Office, as well as activity reports prepared by individual magistrates. We studied laws, congressional bills, committee reports, legislative histories, operation manuals, model local district court rules and professional articles dealing with the magistrates system. Further, we reviewed in detail written reports prepared by the Administrative Office on district courts' requests for new magistrate positions. We also studied proposed changes to the Federal Rules of Civil Procedures. In this regard, we spoke with the Chairman of the Judicial Conference's Standing Committee on Rules of Practice and Procedure. Our detailed field review work was performed between January 1981 and May 1982. Updated information was obtained at the Administrative Office of the U.S. Courts through January 1983. This review was performed in accordance with generally accepted Government auditing standards.

CHAPTER 2

FEDERAL MAGISTRATES HAVE BECOME AN IMPORTANT AND INTEGRAL PART OF THE FEDERAL JUDICIAL SYSTEM

Federal magistrates have become an important and integral component of the Federal district courts. The position was created to improve the Federal judicial system and to alleviate the burden of increasing workload and backlogs in the district courts. Since 1968 magistrates' authority and duties have been expanded and the magistrates now annually process tens of thousands of matters which district judges would otherwise have to handle. Judges are then able to devote their time to other important duties. Since the establishment of the magistrates system, district court productivity has increased dramatically--368 civil cases terminated per judge for the year ended June 30, 1982, versus 201 for the year ended June 30, 1970 (before the nationwide implementation of the magistrates system). Although the magistrates system may not be the sole reason for this increased production, it is clearly a major contributor. However, the district courts are still faced with large backlogs, due to a tremendous increase in case filings. Efficient, effective use of magistrates, therefore, is necessary if the courts are to keep up with the increasing workload.

MAGISTRATES REPLACED THE U.S. COMMISSIONER SYSTEM

The Federal Magistrates Act of 1968 reformed the U.S. district court system by abolishing the U.S. commissioner position and creating in its place an upgraded judicial officer known as a U.S. magistrate. Congressional hearings held from 1965 through 1968 showed that the U.S. commissioner system had many substantial defects, including:

--Commissioners had limited judicial authority. They handled initial proceedings in criminal cases, and some also tried persons charged with petty offenses (maximum penalty of imprisonment of not more than 6 months or a fine of not more than $500 or both) committed on Federal enclaves.

--Attracting highly qualified individuals was difficult. Commissioners were paid on a fee system (maximum annual salary of only $10,500), according to the nature and number of matters they handled. Due to the fee system the busiest U.S. commissioners were underpaid for the amount of work they did.

--Commissioners were not required to be trained in law and almost one-third of the over 700 commissioners were not attorneys. However, commissioners frequently had to apply complicated rules of constitutional and Federal law.

The desire to eliminate these defects, coupled with the need to deal with an ever increasing district court workload--case filings increased by almost 50 percent between 1960 and 1968--prompted the Congress to pass legislation.

The act created magistrates as upgraded judicial officials in terms of qualifications, stature, compensation, and responsibilities. The Congress reasoned that such an official, responsible to district judges, would provide certain advantages. Elevated standards, responsibilities, and salary would make the position more attractive to qualified individuals. The increased scope of magistrates' responsibilities would free district judges from procedural and ministerial tasks, allowing them more time to try cases and to handle more significant problems.

The act established full- and part-time magistrate positions. Full-time magistrates were given 8-year terms of office with salaries substantially higher than commissioners' salaries. Part-time magistrates were given 4-year terms and paid according to existing and anticipated workload. Magistrates were required to be attorneys, except that part-time magistrates did not have to be attorneys if qualified members of the bar were not available. The Congress believed that because magistrates had to interpret statutes and follow complicated rules of procedure, legal training was required.

The Judicial Conference was made responsible for determining the number and location of magistrate positions. The selection of magistrates, however, was left to the judges of the individual district courts because the Congress believed that the judges would select the best possible candidates to assist in conducting court business.

Magistrates' jurisdiction was greatly expanded over that of the commissioners

The act gave magistrates increased criminal trial jurisdiction over what the commissioners had and authorized magistrates to assist district court judges in handling a wide range of civil proceedings. The act initially provided magistrates with authority to perform three basic types of judicial duties:

--All the powers and duties formerly exercised by U.S. commissioners.

--The trial and disposition of minor criminal offenses (maximum penalty of imprisonment of not more than 1 year or a fine of not more than $1,000, or both) with the consent of the defendant.

--The following additional duties to assist the district court judges in disposing of their caseloads: conduct pretrial and discovery proceedings in civil and criminal cases, preliminary review of prisoner habeas corpus petitions, serve as a special master in appropriate civil cases, and such additional duties that were not inconsistent with the Constitution and laws of the United States.

Although magistrates were given increased jurisdiction, the act clearly made them subordinate judicial officials. Magistrates were placed under direct control of the district court judges, who were given the discretion to assign matters to the magistrates as they saw fit. Therefore, the act provided judges with flexibility in managing their caseloads.

The district court could authorize magistrates to try minor criminal offenses. Minor offenses were defined in the act as misdemeanors for which the maximum penalty was a $1,000 fine and/or 1-year imprisonment, except for certain statutory exceptions. This authorization represented a substantial increase over the authority of commissioners. Commissioners' criminal trial jurisdiction was limited to only petty offenses committed on Federal enclaves. The increased authority was intended to relieve the district judges' burden of trying minor criminal matters and reduce the crowded dockets that existed in many districts. However, before a magistrate could try a minor offense the defendant had to consent to a trial before a magistrate and waive the right to a trial before a district judge.

Although the law listed only three specific categories of additional duties assignable to magistrates (the conduct of pretrial and discovery proceedings, preliminary review of prisoner habeas corpus petitions, and serving as a special master in appropriate civil cases), it clearly permitted delegation of other matters as long as such duties were not inconsistent with the Constitution and the laws of the United States. The Congress believed that authorizing magistrates to perform various duties would increase the time available for district judges to handle other more important matters.

MAGISTRATE AUTHORITY UNDER ADDITIONAL DUTIES SECTION OF THE ACT WAS UNCLEAR

Shortly after the magistrates system was implemented questions arose over the "additional duties" provision of the act.

Courts of appeals differed as to what types of proceedings district judges could delegate to magistrates. While many district courts progressively expanded the responsibilities of magistrates, others did not because of what they viewed as the uncertain language of the provision and various appellate court decisions regarding the types of matters that could be referred to magistrates. Major problem areas addressed by the courts of appeals concerned the authority of magistrates to: conduct hearings on motions to dismiss and motions for summary judgment, review determinations of the Social Security Administration, and conduct evidentiary hearings on prisoner petitions.

In June 1974, the Supreme Court acted for the first time on a jurisdictional issue affecting magistrates. In Wingo vs. Wedding, [3]/ the Court held that magistrates could make only preliminary reviews of prisoner petitions and could not hold evidentiary hearings in a habeas corpus proceeding. The Chief Justice, in a dissenting opinion, expressly invited the Congress to enact new legislation to clarify its intentions on the authority of magistrates.

AMENDMENTS FURTHER EXPANDED AND CLARIFIED MAGISTRATE JURISDICTION

The unclear additional duties section prompted the Congress in 1976 to amend the act. [4]/ The amendments clarified magistrates' jurisdiction in performing additional duties. They superseded the Wingo vs. Wedding decision and counteracted appellate court decisions invalidating various uses of magistrates. However, the 1976 amendments primarily reflected the broad range of duties already being performed by many magistrates.

The 1976 amendments specifically authorized the judge to designate a magistrate to hear and determine any pretrial matter pending before the court except for certain matters statutorily excluded. Those excluded were motions: for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. For those matters excluded the magistrate was authorized to conduct hearings and submit recommendations to the district judge. With consent of the parties, however, a magistrate could serve as a special master in any civil case.

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[3]/418 U.S. 461 (1974).

[4]/Public Law 94-577, 90 Stat. 2729 (1976) (codified at 28 U.S.C. §§636(b) (1976) [herein after cited as the 1976 amendments.]

The Federal Magistrates Act of 1979

In 1979, the Congress saw the need to further assist the judges and expand the use of magistrates. While the 1968 act and the 1976 amendments sought to free the time of district judges by permitting them to delegate a wide variety of pretrial functions and proceedings to magistrates, the 1979 amendments [5/] sought to free the district judges' time in a different manner. Magistrates were permitted to conduct more trials of both civil and criminal cases when desired by both litigants. The amendments

--gave magistrates the authority to conduct jury and nonjury trials in civil cases where the parties consented,

--expanded the power of magistrates by including all Federal misdemeanors within their jurisdiction as long as the defendant consented, and

--provided standards for the competence of magistrates and procedures for their selection.

Civil trial authority

The 1979 amendments permitted magistrates to conduct and enter judgments in any jury or nonjury civil case under the following conditions: the district court must specifically designate the magistrate to exercise such jurisdiction, and the litigants must voluntarily consent. The parties can either appeal a magistrate's decision to a court of appeals, or, if the parties agreed to do so at the time of consent to magistrates' jurisdiction, to a district judge. In the latter situation, further review by a court of appeals may occur only upon that appellate court's acceptance of a petition filed by a party stating specific objections to the judgment.

The Congress intended to supplement the broad and vague authority of magistrates trying civil cases under the statute's "additional duties" section. Prior to the 1979 amendments, magistrates were not explicitly authorized to enter judgments in civil cases, but more than half the district courts were allowing magistrates to do so with the consent of the litigants. By explicitly authorizing the trial of civil cases, the Congress believed that trial before magistrates would increase throughout the Federal district court system, resulting in more consistent utilization of magistrates.

5/The Federal Magistrates Act of 1979 Public Law 96-82, 93 Stat. 643 (codified at 28 U.S.C. §§631, 634-636, 604, 1915(b) and 18 U.S.C. §3401 (Supp. III 1979)) [herein after cited as the 1979 amendments.]

Criminal jurisdiction

The 1979 amendments also expanded the magistrates' trial jurisdiction in criminal cases from minor offenses to all Federal misdemeanors. [6/] Magistrates were also authorized, for the first time, to try misdemeanors before juries. The Congress, however, retained the requirement that each defendant waive in writing the right to trial by a judge.

Even if a defendant elects that his/her case be tried before a magistrate, the attorney for the Federal Government can petition the court to have the case heard by a district judge. The district court may order the case tried before a district judge if the Government shows good cause (novelty, importance, complexity, etc.). The amendments also provided the district court with the authority to have any misdemeanor tried by a judge rather than a magistrate upon its own motion.

Magistrate selection

The Congress was concerned that all magistrates had not evidenced the same high standards of performance and thus sought to upgrade the competence of magistrates. Consequently, the Congress legislated merit selection requirements. The 1979 amendments required public notice of all magistrate vacancies and the establishment of merit selection panels by the district courts. These panels screen all applicants and provide a list of qualified individuals from which the district judges ultimately make a selection.

THE U.S. MAGISTRATES SYSTEM HAS GROWN TO BECOME AN IMPORTANT PART OF THE U.S. DISTRICT COURTS

Since its inception in 1969, the magistrates system has grown to the point where magistrates annually handle tens of thousands of matters in aid of district judges and have helped make Federal district courts more productive. The increase in case filings has resulted in an increase in the district courts' backlogs, therefore, it is important that the judiciary use the magistrates system in the most efficient and effective manner if it is to fully deal with this workload problem.

[6/] Misdemeanors are defined in 18 U.S.C. 1(3) as any offense for which the maximum prison term that may be imposed does not exceed 1 year regardless of the fine.

The number of full-time magistrates has increased

The magistrates system began in 1969 with pilot programs in five district courts. As of October 1982, there were 223 full-time, 241 part-time and 19 "combination" magistrate positions. [7] At that time 86 of the 94 district courts [8] had at least one full-time magistrate position; 6 others had part-time magistrates. The number of full-time magistrates in district courts ranged from 1 to 7, with 20 courts having 4 or more.

The Judicial Conference, in keeping with congressional preference for full-time magistrates over part-time ones, has steadily reduced the number of part-time magistrates. The number of full-time positions increased from 61 in 1970 to 223 in 1982, while conversely the number of part-time positions fell from 449 to 241. Part-time magistrates, whose duties are normally limited to those formerly performed by U.S. commissioners, are now generally located only where the workload does not warrant a full-time magistrate.

Productivity of district courts has increased, but so too have case backlogs

The number of cases terminated per authorized judgeship has increased substantially since the act was passed. During the 12-month period ended June 30, 1970, (before the nationwide implementation of the magistrates system) district judges terminated an average of 201 civil cases. For the year ended June 30, 1982, this figure had risen to 368. At least part of this increase can be attributed to the efforts of the magistrates. During the year ended June 30, 1982, magistrates disposed of 86,725 misdemeanors and conducted 98,458 preliminary proceedings in criminal cases, 26,983 other criminal proceedings, and 96,846 civil proceedings. Further, they processed 16,551 matters dealing with prisoner litigation. Full-time magistrates performed about 80 percent (260,681) of the matters, with part-time and combination positions accounting for the rest. Many of these matters would have required processing by district judges had not the magistrates handled them. (See page 47 for a more detailed breakdown of the matters disposed of by magistrates.)

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[7] Part-time magistrates also serve as either part-time bankruptcy judges, clerks, or deputy clerks of the court.

[8] Two districts (Guam and the Northern Mariana Islands) were not authorized magistrate positions by the Federal Magistrates Act.

The total number of cases pending in the Federal district courts increased from 181,217 in 1978 to 219,872 in 1982. This growth in pending cases results from the rapidly increased number of cases filed (37 percent) and has occurred despite the increased output of cases terminated per judgeship and a major increase in authorized judgeships in 1978 (from 399 to 515).

To deal with this problem the judiciary needs to use all its resources as efficiently and effectively as possible. The magistrates system has the statutory authority to significantly assist the judiciary in this matter. However, we believe that the judiciary can make better use of the magistrates. The following chapters discuss the changes the judiciary needs to implement as well as legislative revisions to the Magistrates Act needed to allow the magistrates to better serve the judiciary and the public.

CHAPTER 3

MAGISTRATES COULD TAKE MORE BURDEN OFF THE DISTRICT COURT JUDGES

Federal magistrates have successfully assisted district court judges with a significant portion of their extremely heavy workloads. However, obstacles prevent the magistrates system from further reducing the judges' burdens. While the district courts have ultimate responsibility for managing the system, the Judicial Conference is responsible for establishing policies and guidance for the district courts. Thus, the Judicial Conference could take a more active role in removing the obstacles that hinder the magistrates system from being of more assistance to the judges and the courts. The Conference needs to more actively support the magistrates system by:

--Encouraging district courts and judges to more fully utilize magistrates by increasing their duties and roles as circumstances permit. While the Conference provides some information regarding the experiences of various district courts and judges who are using magistrates in both traditional and experimental ways it should provide more extensive information on the effective and efficient utilization of magistrates in a more routine and formalized manner.

--Supporting the development of comprehensive district-wide plans for using magistrates to a greater extent.

--Expanding its involvement in establishing new magistrate positions.

HOW COURTS USE MAGISTRATES

The act authorizes full-time magistrates to perform a broad range of civil and criminal judicial duties and allows the district court and judges to determine which duties magistrates handle in each court. This gives each district the flexibility to deal with its own individual needs and situations. As one might expect, the magistrates system has evolved differently in individual districts. Appendixes IV and V (see pp. 48 and 50) illustrate the differences in the number and type of proceedings conducted by the magistrates in the 11 districts included in our

review, during the statistical years ended June 30, 1981, and June 30, 1982.

However, statistical data does not present the total picture of the various duties performed by magistrates because even within districts the duties of individual magistrates vary. Some magistrates are generalists performing a variety of duties, while others are specialists with duties concentrated in limited areas. Several reasons account for these differences; some are beyond the district's control, such as the number and type of cases filed, while others are controllable by individual districts and judges. The following sections briefly describe the operations of magistrates systems and the factors that dictate how the magistrate system is used in 5 of the 11 districts reviewed. We selected these five districts because we believed they represented a good cross-section view of the various operations of the magistrates systems. Five of the remaining six districts operate their systems very similar to one or more of the five districts profiled below. Therefore, their systems are not discussed in detail. The districts of central California and the District of Columbia are very similar to the district of Massachusetts. The northern and southern districts of Ohio are similar to the district of Connecticut. The southern district of California has characteristics similar to eastern Louisiana and Oregon. The sixth district (the district of Rhode Island) was atypical because of its small caseload and limited geographic size; therefore, we do not discuss it in detail.

District of Connecticut--geographical location and magistrate expertise dictate use of magistrates

The district of Connecticut has three magistrates, located in three cities. Although the magistrates share the district's overall duties, each magistrate has a distinct workload. The magistrates' locations and personal expertise contribute to the differences.

For the year ended June 30, 1981, all three magistrates handled civil non-dispositive motions; however, the number varied noticeably (558, 623, and 896 for 1981). The two magistrates processing fewer civil non-dispositive motions had other significant duties. The magistrate located nearest the State's major correctional institution receives most of the district's prisoner petitions. Further, a district judge co-located with

this magistrate has a great deal of confidence in the magistrate's ability to manage civil cases and obtain pretrial settlement. Because of this, the magistrate conducts numerous civil pretrial conferences, a duty which is assigned infrequently to the other two magistrates in the district. However, these magistrates are assigned a much heavier volume of dispositive and non-dispositive motions in civil cases by the district's judges.

District of Maryland--
heavy criminal case workload drives
the use of magistrates

In Maryland, where there are nine district judges, the district's five magistrates spend more than half of their combined time handling criminal matters. These magistrates accounted for nearly 10 percent (9,117) of the misdemeanors disposed of by all magistrates during 1981. Within the district's boundaries are many Federal facilities on which numerous minor offenses, mainly traffic violations, are committed. As can be seen on page 47, the magistrates in this district are processing more misdemeanors than magistrates in any of the other 10 districts listed.

In order to efficiently handle the heavy misdemeanor caseload, the district's magistrates specialize. For example, while two spend all their time, and two others spend up to half their time, on criminal matters, the fifth magistrate handles few such matters. He is, however, responsible for all land condemnation cases and along with the two magistrates who spend part of their time on criminal matters accounts for the district's magistrate civil case duties. The fact that the equivalent of only two full-time magistrates handle civil matters accounts for the district's relatively low per magistrate output in civil matters.

Eastern district of Louisiana--
magistrates specialize in certain
activities

The eastern district of Louisiana has 13 district judges and 5 full-time magistrates. Court is conducted primarily in one location and the district is geographically small. The district has primarily a civil caseload and relatively few criminal filings. The district's judges use magistrates in basically the same manner. Faced with a substantial civil case backlog and a high number of civil filings, the judges use the magistrates

extensively in the early stages of civil and criminal cases. They handle many pretrial matters, including all discovery motions and some preliminary conferences, and most of the district's prisoner petitions and Social Security benefit reviews.

Not all the magistrates, however, perform the same duties. While four magistrates share the civil cases, the fifth is solely responsible for criminal matters because of his years of experience and specialized expertise with such matters. Judges and magistrates told us there are distinct advantages to this type of specialization and welcomed it.

The judges in this district told us they have also decided not to allow magistrates to try any civil cases, because they believe it is more important to concentrate on clearing up the current backlog than allowing magistrates to try cases. However, magistrates do handle post-trial special master's hearings on various prisoner matters and civil cases where it is necessary to establish liability and/or damages.

District of Massachusetts--
judges' preferences drive the
use of magistrates

The district of Massachusetts has 10 judges and 4 magistrates. Court is conducted primarily in Boston, although one judge is permanently assigned to Springfield, about 90 miles west. All four full-time magistrates are physically located in Boston. The district's work is primarily civil, and the court has had a large civil case backlog for several years.

Although the local rules of the court allow the magistrates to perform all the duties authorized by the act, not all judges are conferring the full range of duties on magistrates. The rules give the judges full discretion regarding the type and number of matters they will refer and, as a result, we found that the number and type of matters referred varied significantly. While some judges automatically referred specific types of matters, others reviewed those matters on a case-by-case basis before referral or did not refer any of those types of matters. For example, two judges referred all reviews of Social Security determinations for magistrate review and recommendations, believing that a district judge should not get mired in such detailed work. However, one judge retained all such cases believing the matter to be too important for a magistrate to handle.

In commenting on our report, the district of Massachusetts stated that some members of the court believe a substantial difference in the ability of the various magistrates had a serious impact on the individual judges' decisions regarding the use of magistrates. It also noted that the physical limitations of the courthouse building seriously impact on the magistrates' ability to conduct jury trials and, consequently, on the judges' willingness to refer matters to magistrates. (See app. XIII.)

District of Oregon-- magistrates perform substantially same duties as judges

The Oregon district's approach to using magistrates is unlike any of the other districts included in our review. The magistrate's position has evolved to the point where a magistrate's duties are very similar to those of a judge. The district has five district judges and three full-time magistrates.

During both statistical years 1981 and 1982, these magistrates performed many civil duties. In 1982 they conducted 42 civil trials, far more than any other district in our review, even though the district is smaller than nearly all our selected districts. Nationally, in only three other districts did magistrates preside at more civil trials. However, the Oregon magistrates conducted more civil jury trials (19) than any other district in the country but one (eastern Tennessee with 28). Further, only seven districts terminated more consensual civil cases. The magistrates are automatically assigned civil matters in the same manner as judges. Appendix IV shows only a portion of the work performed by magistrates in Oregon because they also participate extensively in the administration of the court, including managing and assigning cases.

THE JUDICIAL CONFERENCE NEEDS TO ACTIVELY SUPPORT THE EXPANDED USE OF MAGISTRATES

Even though the magistrates system has demonstrated its ability to enhance the movement of cases through the district courts, some district judges still hesitate to use magistrates as extensively as they could. In order for the magistrates system to have its fullest impact on the courts' workloads, judges must be willing to use magistrates freely, to give them responsibility, and to experiment with new ways to use them. In the districts included in our review some judges utilized magistrates extensively to assist in the movement of cases; others limited their utilization.

The Judicial Conference could have a positive impact on the utilization of magistrates if it encouraged and stressed the need to use magistrates for all types of judicial and administrative duties, whenever possible and practical. While it is the Conference's policy to encourage such practices and to provide information regarding uses of magistrates, it needs to more actively demonstrate its support by providing district courts, on a routine basis, information on the efficient and effective use of magistrates.

A number of factors influence the judges' decisions on how magistrates are used

The Federal Magistrates Act placed the day-to-day control over the magistrates system, as well as individual magistrates, in the hands of the district courts and judges. The judges control the manner and extent magistrates are used. Accordingly, the long-term future of the system rests with the judges. Judges base their decisions on the use of magistrates on a number of factors related to district and personal circumstances. Personal preferences and perceptions are the basis for many decisions regarding what matters are referred to magistrates.

Although the act defines the general authority of magistrates, it does not require that courts use magistrates for any specific duties, if at all. Duties of magistrates and procedures for their use are generally prescribed in each district court's rules, which are developed and approved by the district's judges. The local rules of the individual districts included in our review were, for the most part, adaptations of the provisions of the act with some modifications which granted the magistrates broad authority. Although the local rules broadly define magistrate duties, they leave the actual decisions on duties and case assignments to the individual judges. This has resulted in a wide variance among districts as to how magistrates are used.

Matters referred to magistrates vary

The rationale behind judges' decisions to refer matters to magistrates, as well as the method used to make decisions, varies among judges. Some judges make blanket decisions directing that specific types and/or numbers of matters be routinely referred to magistrates, while other judges make case-by-case

decisions. Although district judges are well within their statutory authority when they limit the referral of matters to magistrates, such limitations may not be beneficial to the development of the magistrates system or reduce case backlogs.

The personal preferences of judges contribute to the decisionmaking process. For example, a judge may prefer to deal with a particular type of case (such as anti-trust, patent, or tort), or a specific type of action (such as dispositive motions, settlement conferences, or pretrial motions). Conversely, a judge who does not like to deal with a particular type of case or matter may refer it to a magistrate.

Judges' preferences are a factor in criminal cases as well as in civil cases. While magistrates do not have the authority to preside over felony trials or accept guilty pleas in such cases, they can handle most pretrial matters. Although some judges allow magistrates to handle all pretrial aspects of felony cases, others prefer to handle such matters themselves.

There are a number of other reasons why judges restrict duties of magistrates. These include perceptions as to the capability of individual magistrates, evaluations of the need to provide magistrates work, beliefs that magistrates can handle only certain types of cases or the case or matter is too important or difficult for a magistrate to handle, and their own personal preferences to handle certain litigative matters. Through discussions with judges in the various districts visited, we ascertained the views and opinions as to why magistrates are used a certain way in the district courts.

--One judge refers matters to magistrates because of his desire to provide magistrates with an equal share of the court's workload. He said he periodically checks to see if his referrals are proportionate to the other judges' referrals and increases or decreases his referrals accordingly. His assessment is made on the basis of total matters referred without consideration for the type and difficulty of the matters or the time to complete them.

--One judge told us he will not refer settlement conferences to magistrates because he believes they do not possess the special skills needed to bring parties together. He added that he believes the additional power of district judges helps settle cases.

--Judges in two districts told us they regularly refer settlement conferences to magistrates because they believe magistrates are particularly skilled in this area.

--One judge has decided to use magistrates in a novel way by having a magistrate preside over a summary jury trial in cases where the litigants have reached an impasse in settling the case. The judge told us that this allows the litigants to evaluate the relative strengths of their case and provide the magistrate an opportunity to function within a civil trial environment and familiarize the local bar with magistrate work.

--Judges told us that they do not believe magistrates are appropriate judicial officers for handling specific aspects of civil cases. Although none were opposed to the concept of using magistrates, we found a few judges who opposed the use of magistrates for certain functions. For example, one judge refused to allow magistrates to try civil cases, and another judge believed magistrates were no more than elevated law clerks and should be used as such.

--One judge referred prisoner litigation cases to magistrates, whereas another judge refused to refer such cases because he felt these cases were too important to allow a magistrate to handle them.

The importance of magistrates' performance in assisting the court was pointed out by the Judicial Conference's 1981 report to the Congress which stated:

> "As supplemental judicial resources within the district courts, magistrates conserve the scarce time of district judges so the judges may perform the duties that they alone should perform as a matter of law or constitutional propriety."

It is difficult to object to the individual referral decisions made by judges because they are based on personal judgments; however, it is clear that some judges restrict referrals because they do not believe that magistrates can or should handle such matters. In contrast, we found that magistrates in the Oregon district are allowed to perform all the duties authorized by the act.

Oregon district magistrates perform a wide range of duties

In contrast to the limitations of responsibilities of magistrates, we found that the magistrates in the district of Oregon have, since the initiation of the magistrates system,

performed the full range of duties authorized by the act. Judges view magistrates as their peers and allow them to be assigned cases and duties commensurate with those of judges. They fully participate in the administration of the court and are members of court committees and policymaking groups.

The judges viewed the Magistrates Act as a way to deal with the district's substantial case backlog and heavy judicial workload. Accordingly, they recruited a highly qualified State judge as the district's first magistrate and assigned him duties previously performed in Oregon by judges. Pleased with the results the court continued to recruit highly qualified individuals as new magistrate positions were authorized and expanded their authority as the act allowed.

The district judges told us that assigning a full range of duties to their magistrates has worked well. Magistrates have borne a significant portion of the district's workload and have helped fill the gap that has occurred when authorized judgeships were vacant for extended periods. During these periods, the judges referred nearly everything possible to magistrates. On one occasion the judges recalled matters because the magistrates were actually carrying a larger workload than the judges.

For the most part, the district's magistrates are assigned matters in the same manner as district judges. Under the district's case management system cases are not assigned to a specific judge or magistrate until the pretrial order is lodged. When complexity or urgency dictate, cases may be assigned earlier. Prior to assignment, any judge or magistrate can be designated to handle matters, and any referral of matters will depend upon individual workload and availability.

Although most cases in the Portland division are randomly assigned equally to judges and magistrates, exceptions occur in some instances, such as

--when experience or familiarity with certain cases dictates that a specific judge or magistrate should be assigned,

--when parties do not consent to trial before a magistrate, and

--magistrates receive fewer Social Security benefit reviews because of their smaller supporting staffs.[9]

However, even after a case has been assigned, any judge or magistrate may ask another official to handle a case-related matter. For example, the judges frequently refer settlement conferences to one magistrate who they believe to be particularly effective in this area. Because one judge splits his time between the Eugene and Portland divisions, the full-time magistrate in Eugene handles nearly all pretrial matters as well as all district prisoner petitions.

In addition to processing cases, the magistrates in Oregon also participate in the management of the court. Magistrates sit with judges on court committees and manage the pretrial calendars in both Portland and Eugene. While some other districts designate committees or individual judges to communicate with the magistrates and report on magistrate issues, the Oregon magistrates meet weekly with all district judges. The two groups freely discuss the court's problems and their mutual interests. Magistrates participate in decisionmaking and have as much voice as do the district judges.

The district judges told us that they consider the magistrates to be their peers and as qualified as they to preside at judicial matters. The judges, as well as court personnel, openly refer to the magistrates as judges. Both the judges and magistrates point to the success of their team efforts and the high number of civil trials presided over by magistrates as an indication of the bar's acceptance of magistrates. The judges believe that their positive attitude toward magistrates has enhanced the bar's viewpoint. A review of the district's production statistics for statistical year 1981 lends credence to their claims. The Oregon district had the third highest number of weighted filings [10] per judgeship in the country during 1981. However, the district was able to terminate more cases per judgeship than 71 other districts, with civil cases taking

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[9] Such matters assigned to magistrates are eventually reclassified as findings and recommendations so that judges can provide the required review and approval.

[10] A method used by the Judicial Conference to evaluate workload using both absolute number of cases and the varying complexity of different types of cases.

only an average of 7 months, 2 months less than the national average. Officials of the Oregon district believe that other courts could use their magistrates more extensively and effectively and more should be done to convince them to do so.

Greater dissemination of information on effective methods of using magistrates is needed

It is essential that magistrates be used effectively and efficiently if the system is to have its maximum impact on the disposal of cases within the district courts. Only a few judges are philosophically opposed to magistrates and most attempt to utilize magistrates in a manner which fits their circumstances. However, decisions are frequently based on perceptions and preferences. There is little information available to judges on how the system has worked elsewhere and what magistrates can accomplish when given the opportunity. Such additional information would be valuable in assisting district courts and judges to re-evaluate their own use of magistrates and to encourage judges to experiment more in different areas.

The legislative history of the act clearly indicates that the Congress intended district judges to experiment with innovative and imaginative methods of utilizing magistrates. Some districts and individual judges have complied with this intention with good results. Information on these uses of magistrates, however, is not formally distributed and no studies have been conducted to evaluate the effectiveness of the different methods employed by district courts in utilizing magistrates. Instead, district judges receive bits of information in a variety of ways and in a rather disorganized fashion. Further, no assurance exists that all judges are receiving the same information. Judges often receive information from

- --the Administrative Office of the U.S. Courts on how other districts are utilizing magistrates when judges ask for it;
- --private studies which have been published in legal magazines;
- --seminars conducted for newly-appointed judges, a part of the seminar is dedicated to the role of magistrates;
- --discussions with other judges at various conferences; and

--statements made by judges at congressional hearings published in hearing records.

In jointly commenting on our report, the Administrative Office and the Magistrates Committee said that they had distributed to each Federal judge, magistrate, and clerk of court: (1) model local rules on the use of magistrates, (2) suggested procedures for the referral of civil and criminal matters to magistrates, (3) guidelines for implementing the 1979 amendments, and (4) checklists on the jurisdiction and proper use of magistrates. They also said that the Federal Judicial Center had during its continuing education programs for judges and magistrates devoted considerable time to the effective use of magistrates. (See app. XII.)

The Administrative Office stated that its Office of Management Review periodically analyzes the operations of each district court, including the use of magistrates. The Magistrates Division regularly distributes written materials on the jurisdiction of magistrates and advises court officials of these matters. The Division also consults with and advises the courts on utilization of magistrates when preparing survey reports resulting from district requests for additional magistrate positions or the continuing need for existing positions. Further, the Administrative Office advised us that the Conference has on many occasions encouraged districts to take full advantage of the act and strongly urged full utilization in the Conference's 1981 report to the Congress. However, the Administrative Office acknowledged that more could be done and advised that it would continue to explore with the Magistrates Committee additional ways to do so. (See app. XII.)

Although a rather large body of information is available at the district court level, it has not been studied nor disseminated in an effective manner. Judges we spoke with believed that a formal system of disseminating information on magistrate utilization would be very helpful. Some new judges were withholding referrals of matters to magistrates until they better understood the operations of the Federal system and the effective use of magistrates. A more active role by the Judicial Conference in determining magistrate utilization, coupled with a formal communication network for disseminating information on the effective means of using magistrates, would help make the district courts more effective and more knowledgeable of success stories in other districts.

DISTRICT COURTS NEED TO PLAN FOR MAGISTRATE USE

Although the Congress did not expect the magistrate system would be operated uniformly nationwide, it did expect that each district court would develop its own plan for using magistrates to its best advantage. We found, however, that such plans do not exist in all districts. In Districts without plans magistrates have been assigned duties without regard for overall district needs. Each district court needs to develop a comprehensive plan for using magistrates if they are to more fully contribute to improved movement of cases within their district. The Judicial Conference should act to ensure that each district develops a comprehensive plan to enhance the use of magistrates.

District courts do not have comprehensive plans for using magistrates

When considering the Federal Magistrates Act and its amendments the Congress foresaw the need for a flexible system for using magistrates. The particular needs of individual districts needed to be addressed because district courts varied in size and makeup of cases. However, in some districts the magistrates system has evolved into a fragmented system oriented toward the individual judge. As discussed on page 18, the decisions on magistrate duties and responsibilities are frequently being made by individual judges based extensively on individual preferences and perceptions. Often these decisions have been made without appraisals of both the district court's needs or the most effective and efficient use of magistrates in view of the court's needs. The Judicial Conference needs to encourage districts to develop a comprehensive plan which will result in the best use of magistrates in each district court.

The amount of coordination among the judges regarding magistrate utilization varied significantly among districts. While some districts had extensive planning and coordination in the use of magistrates, others had very little. The district of southern California had used its magistrates for duties authorized by the 1976 and 1979 amendments to the act prior to the passage of these amendments. Its magistrates try civil cases and handle major pre- and post-trial matters. During our fieldwork, this district modified magistrates duties. After discussions among the judges and magistrates, it was agreed that Social Security benefit reviews would no longer be referred to magistrates. Judges can rule directly on such matters, while

magistrates cannot and must write detailed findings and recommendation reports. These reports are then used by the judges to make their rulings. Furthermore, law clerks do much of the research when judges handle the cases, whereas magistrates do much of their own research. Therefore, it was decided that judges could handle such matters more efficiently and magistrates were more productive doing other things.

The Maryland court also began to reconsider its use of magistrates during our fieldwork. The judges agreed on the need for a more comprehensive approach for using magistrates because they have seen problems with inconsistent use of magistrates by judges which has led to some judges overloading magistrates while other judges could not get access to them. The matters being referred often included dispositive matters which required extensive magistrate time and still required judges to make a final decision. As an initial step, the judges agreed to limit referrals to five per month per judge. All judges were to have equal opportunity to use the magistrates.

The Oregon district, where magistrates are regarded as judges and have nearly the same duties as district judges, has also modified its operations to use magistrates more efficiently. The judges and magistrates agreed that magistrates would handle only half as many reviews of Social Security administrative determinations as judges, for most of the same reasons as the prior district made a similar decision.

While these situations in the districts of southern California, Maryland, and Oregon reflect at least a move toward comprehensive approaches to matching the circumstances in the districts with magistrates' capabilities, in other districts situations are not so positive. In one district we found that some judges were not obtaining full access to magistrates. One judge was spending a considerable amount of time on a single long-term case and was sending nearly all his civil cases to the magistrates for overall pretrial management. This judge's actions were based on his personal caseload without regard for whether this was the most effective and efficient way of using magistrates to meet overall court needs.

One judge in another district explained that, in his district, even though magistrates have heavy workloads they are underutilized. This judge has a reputation as an outstanding

case manager and has annually reduced his backlog. He uses magistrates extensively but discriminately and refers to magistrates only those matters that they are able to handle as efficiently and effectively as himself. He retains those matters that the magistrate position cannot handle as well. In this judge's opinion other judges will just refer matters based on likes or dislikes without concern for relative efficiency. In such situations, the magistrates are busy but not used efficiently.

The Congress did not expect that the magistrates system would be operated uniformly nationwide. Instead it was intended that each district court would establish magistrate responsibilities and duties based on individual district court's needs. Although the system has evolved as intended in some districts, it has not in others. Rather than a flexible system that responds to district court circumstances and needs, it has frequently become an uncoordinated apparatus driven by unilateral decisions.

The Judicial Conference can help this situation by encouraging the districts to evaluate their use of magistrates. Upon completion of the evaluation, districts should develop a comprehensive plan that will provide for the most efficient and effective use of magistrates within their disstrict. Periodic evaluation would help to recognize shifts in district circumstances, and adjustments could be made to keep the magistrates system well tuned.

In commenting on our report, the Administrative Office agreed that the assignment of duties to magistrates should be made after an appraisal of both the district court's needs and the most effective and efficient use of magistrates in view of these needs. It said that it would be beneficial for a district court to develop a "plan" for use of magistrates, although it would not ask each court to adopt a rigid approach. (See app. XII.)

THE JUDICIAL CONFERENCE NEEDS TO EXPAND ITS ROLE IN CREATING NEW POSITIONS

The district courts need assistance in dealing with the growing number of case filings and civil case backlogs. The Congress envisioned the magistrates system as a means of dealing with the increases and fluctuations in district court workloads

at substantially less cost than establishing new judge positions. While the Judicial Conference's current system for approving new magistrate positions is based on sound criteria, it is not as effective in dealing with the need for new positions as it could be. The Conference needs to be more active in encouraging qualified districts to request new positions. Without additional Conference involvement, the courts will remain hesitant to request needed and justified magistrates positions.

The Judicial Conference controls the creation of magistrate positions

Magistrate positions are established by the Judicial Conference, subject to the approval of the Congress through the appropriation process. Individual magistrates are appointed by the concurrence of a majority of all the active judges in a district court. The Congress vested the authority for establishing positions with the Conference so that the process could be more timely and responsive than the congressional appropriation process for creating new judgeships had traditionally been. The district judges were given appointment authority because the Congress believed the judges were best able to select individuals who would meet the courts' needs. The Congress was also concerned with the cost of increasing the courts' capacity to deal with its workload. The cost of establishing and maintaining a full-time magistrate was and remains at approximately one-half that of a district judgeship.

Magistrate positions (full- and part-time) are authorized by the Judicial Conference at its semi-annual meetings, subject to funding through the congressional appropriation process. At those meetings the Conference reviews requests for new positions as well as the need for existing positions. The normal steps for creating a new position are as follows:

--The chief judge of the district makes a request for a magistrate position to the Magistrates Division of the Administrative Office of the U.S. Courts.

--The Administrative Office initiates a study of the district court and recommends approval or disapproval.

--Upon completion, the study is forwarded to the district court and the judicial council of the appropriate circuit for comments and recommendations. The study and all recommendations as well as comments are forwarded to the appropriate Judicial Conference committees.

The Judicial Conference needs to be more active

While the Conference's basic system for establishing new full-time positions is sound, the Conference needs to be more active in the process. The current system relies upon the initiative of individual district courts which lack a full awareness of the factors contributing to the creation of a new position. The Conference needs to let the district courts know more about the criteria that must be met to obtain new positions and to encourage requests from qualified districts.

The existing system would be adequate if the criteria for recommending and approving positions were well known. However, we found that the Conference and the Administrative Office have only disseminated a limited amount of material advising the districts of the specific criteria used to determine the need for new positions. Communication of such criteria to the district courts is now on an informal and irregular basis. For example, five of the chief judges with whom we spoke said that they were either unaware of, misinformed, or confused about the criteria.

--One chief judge advised us that he was unaware of the criteria before he submitted his request and that he did not understand why the request was denied or what changes would be needed to justify the need for a magistrate position.

--Another chief judge, who was recently denied an additional magistrate position, was also unaware of the criteria used to evaluate his request. He stated that he did not understand why his request had been denied or what changes would be necessary to qualify for a magistrate position.

--Two chief judges, who recently had requests approved, said they did not know the Conference's criteria prior to their request. They said they submitted their requests when they and the district judges believed that the requests would be approved. They further told us that they could have used these magistrate positions productively in the past.

During the four Judicial Conference meetings held between September 1980 and March 1982, the Judicial Conference reviewed

a total of 38 requests for additional full-time magistrate positions. These included requests for new positions, reexaminations of previously deferred or rejected requests, and the conversion of some part-time to full-time positions. Of the 38 requests, 19 were approved during these four sessions.

We believe there are districts which qualify under the Conference's criteria for new magistrate positions but have not applied. When considering requests for new magistrate positions the Conference considers: a district's overall workload (i.e. cases filed, terminated, and pending) in relation to that of other districts; how well the court utilizes the current magistrate positions; and the availability of appropriate magistrate type duties as well as the district's commitment to future utilization. Using the Conference's criteria we reviewed the status of all 92 districts eligible to receive magistrate positions. We examined statistics measuring the production of the judges and magistrates and cases pending. Further, we discussed the way the courts utilize their magistrates with Administrative Office personnel. We determined that 32 district courts who met the criteria had not requested new magistrate positions during the preceding 2 years.

Even though the individual district courts are responsible for using their magistrates effectively and for initiating requests for positions, the Conference is responsible for enhancing the effectiveness of the courts. The steady increase in case backlogs requires positive Conference action. Because the magistrates system can help alleviate the backlog problem, the Conference needs to take full advantage of the system by authorizing additional magistrate positions for qualified district courts. The Conference could help such districts by more formally communicating its criteria for approving new positions and by encouraging them to seek such positions.

The Magistrates Committee and the Administrative Office, in commenting on our report, provided additional information concerning the request and approval of magistrate positions. They said there are several ways in which they presently communicate criteria to district courts. These include: briefing new chief judges on the criteria, delineating the criteria in its survey report submitted to the court whenever a request is made for a new position, and identifying the underlying reasons for the Conference's denial of a request. However, in light of our findings they agreed that the present means needs to be improved and that more formal communication of the criteria was needed. They stated that they will consider ways to more effectively communicate the criteria. (See app. XII.)

The Magistrates Committee and the Administrative Office also stated that they have been sensitive to the need to hold down costs and have recommended additional positions only when there is strong and well-documented justification. The Administrative Office, through its Magistrates Division, monitors the caseloads of the courts and magistrates and initiates informal reviews in courts appearing to need additional magistrates. They added, however, that since May 1982, approximately one-half of the 32 districts we identified as meeting the criteria have either been authorized an additional full-time magistrate or have a request pending before the Magistrates Committee. Additionally, key personnel in nearly all the remaining courts have been involved in informal discussions concerning the likelihood of additional magistrate positions. They advised us that, in view of our findings, they may consider a more active role in authorizing magistrate positions. (See app. XII.)

CONCLUSIONS

Magistrates relieve district court judges of a significant portion of their extremely heavy workloads and help expedite the movement of cases through the district courts. Most district courts do use their magistrates fully and as intended under the act. In addition, a trend toward greater utilization of magistrates is evident and it shows the courts' growing confidence in this new system. However, the tremendous escalation in case filings has resulted in increased civil case backlogs. Therefore, it is important, that the district courts and judges take the fullest advantage of the magistrates system.

The Congress did not intend that the magistrates system should be uniform or identical in each district court. Rather, the system was created with the flexibility to deal with each district court's particular circumstances and requirements. It is not surprising that the system evolved differently among district courts. Regardless of the duties they perform, it is apparent the magistrates have relieved a significant portion of the district judges' burdens. Nevertheless, several obstacles prevent magistrates from contributing more to the effectiveness of the district courts.

District courts promulgate rules which govern how magistrates will be used, but individual judges make the day-to-day decisions on duties and case assignments. Decisions on the duties to be performed by magistrates are frequently based on the preferences of individual judges; consequently, these decisions differ among judges. Some judges give magistrates major duties

while others will not because they either lack confidence in magistrates or believe they are inappropriate judicial officials. The accomplishments of the Oregon district's magistrates demonstrate that magistrates can successfully handle various legal matters or duties. Information about the effectiveness of the use of magistrates by such courts as Oregon needs to be disseminated to other courts so that they will have the knowledge of how they might use magistrates.

Decisions regarding the assignment of duties and matters to magistrates are often made without consideration for relative efficiency of the court's operations or the specific needs of a district. The act created the magistrates system as an integral part of the district courts rather than a separate tier or court or as a formal division within the district courts. The current system gives each court maximum flexibility to divide the total work of the court in order to best meet local needs. However, in some courts, the magistrates system has evolved into a fragmented system oriented toward the individual judge. Therefore, the courts need to reevaluate how they are using their magistrates and develop a comprehensive plan for the most efficient and effective use of magistrates.

The magistrates system was established as a responsive means of dealing with the increases and fluctuations in district court workloads at substantially less cost than new judgeship positions. Magistrate positions are established by the Judicial Conference, subject to the congressional appropriation process. Although this system is sound, it relies too heavily upon the initiative of individual district courts which do not have full awareness of the factors that are considered in approving a new position. The criteria for recommending and approving positions are not well known and communication of such information to district courts is generally on an informal and irregular basis. If the district courts were fully aware of such criteria, they would be in a much better position to evaluate whether or not they could utilize another position.

Individual courts have not been provided the direction and information needed to overcome existing obstacles to increasing the contribution that magistrates can make to the effectiveness of the district courts. The Judicial Conference could assist the district courts by taking a more active role in providing such direction and information.

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

The Judicial Conference should take a more active role in promoting the efficient and effective use of magistrates in the district courts. Specifically, we recommend that the Conference:

--Encourage district courts and judges who are restricting the use of magistrates to explore methods to increase the use of their magistrates. In this regard, the Conference should improve the system for disseminating information regarding the experience of judges and courts who have been using magistrates extensively to substantially relieve the courts' workloads. This system should more formally and routinely transmit information to the district courts.

--Encourage, through the issuance of a policy statement, all district courts to analyze their current use of magistrates and develop within their respective districts a comprehensive plan for using magistrates in the most effective and efficient manner.

--More formally disseminate to all district courts the criteria used in evaluating and approving applications for new full-time magistrate positions. Further, the Conference and the Administrative Office should rely less exclusively on court-initiated requests and should identify those courts that should be encouraged to request additional positions.

AGENCY COMMENTS AND OUR EVALUATION

The Magistrates Committee and the Administrative Office were in overall agreement with the conclusions and recommendations stated in this chapter. They agreed that improvements to the magistrates system are possible, and they will make an effort to correct the deficiencies noted. They referred to our report as a professional, thorough treatment of the subject and noted it contains many constructive comments. They recommended certain changes that would present a fuller picture of their activities and these changes have been incorporated throughout this chapter.

Ten of the 11 district courts included in our study commented on the report. Three districts agreed completely with

the conclusions and recommendations. Five others did not specifically address the subject of this chapter other than to discuss their own situations or the need for flexibility. We have included their views in the chapter. Two other districts took exception to specific findings; their comments are discussed below.

In the report sent to the Administrative Office, Judicial Conference's Magistrates Committee and the 11 district courts, for comment we referred to the comprehensive plan discussed in this chapter as a "uniform" approach. Even though it was not our intention that uniform be interpreted as a standard, inflexible system, we believe, on the basis of the comments we received, that it was so interpreted in some cases. The Maryland district and the northern district of Ohio objected to any suggestion of a "uniform" approach. Therefore, we have revised our terminology to use "comprehensive" in lieu of "uniform" because it better represents our views.

The northern district of Ohio further questioned the validity of a coordinated approach in multi-judge, multi-magistrate courts. While we can appreciate the concern and the complexity of managing such a large district, we do not believe that the concept of a comprehensive plan is invalid in such a district. In fact, we believe it is even more imperative for such a district to periodically review and analyze its workload and determine the most advantageous approach to using magistrates. In multi-judge courts, the judges must work together and agree on what types of duties magistrates will be assigned so that matters that magistrates cannot handle as efficiently as judges are retained by the judges. In this manner, the magistrates will be able to better serve all the court's judges more fully. However, we recognize that after review and analysis the court may find it preferable to maintain the current system.

CHAPTER 4

CHANGES ARE NEEDED IF THE CIVIL TRIAL PROVISIONS OF THE ACT ARE TO BE FULLY EFFECTIVE

Actions by both the Congress and the Judicial Conference are needed if the civil trial provisions of the Magistrates Act are to have their desired impact. The authority for magistrates to conduct and enter judgments in civil matters, upon the consent of the parties, was intended to lighten the workload on judges and provide the public with more timely access to the courts. Different applications of the act's provisions have led to inconsistent implementation and have limited the act's effectiveness.

Judges in 2 of the 11 courts reviewed believe the language of the act prohibits them from fully managing and controlling their cases if they designate magistrates to conduct and enter judgments in civil cases. Judges in these two districts will not designate their magistrates to conduct trials of civil cases. The Judicial Conference believes that the positions of the judges in these two courts do not accurately reflect the act's language and intent. We agree with the recommendation that the Judicial Conference has made to the Congress modifying the language of the act to reinforce the district court's authority to control cases even when magistrates are designated to exercise jurisdiction over civil matters. However, we are proposing language changes that differ from those of the Conference.

The processes used for notifying parties that a magistrate, in lieu of a district judge, could conduct and enter a judgment in a civil case differ broadly among districts. The act authorizes the district clerk of the court to notify the parties in a civil case of their right to consent to have their case heard by a magistrate. Furthermore, the act prohibits judges and magistrates from persuading or inducing the parties to consent. Implementation of this aspect of the act also varied widely among the districts we visited. While some judges will not discuss with litigants the opportunity for them to consent, others freely and routinely discuss it with litigants. In one district, the clerk of the court actively sought consents; others only sent out perfunctory notices. The Judicial Conference should develop a policy that would achieve consistency in the notification process. This policy should provide guidance to the judges regarding their proper participation in the consent process and establish effective notification procedures that clerks of the court should follow. This could lead to increased

voluntary consents which would relieve some of the judges' workload.

THE "RIGHT" TO TRIAL BY MAGISTRATES HAS CREATED A PROBLEM

The 1979 amendment to the Federal Magistrates Act (28 U.S.C. 636 (c)(1)) states

> "Upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case, when specifically designated to exercise such jurisdiction by the district court or courts he serves* * *."

The act goes on to say (28 U.S.C. 636 (c)(2)):

> "If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of the court shall, at the time the action is filed, notify the parties of their right to consent to the exercise of such jurisdiction* * *." (emphasis added)

In two districts in our review magistrates have not been designated to exercise civil trial jurisdiction. The judges believe the act's language, specifically the phrase "their right to consent", hinders, or even prohibits, judges assuming jurisdiction over cases in which the parties have consented to a magistrate's jurisdiction. The judges are concerned that they will lose control over individual cases. Furthermore, they believe they will not be able to delegate work to magistrates who are occupied conducting trials and thereby cannot fully manage the districts' workloads.

The Judicial Conference's December 1981 report [11/] to the Congress disputed this position. The report stated that judges do not have to relinquish control of a case after litigants' consent has been received. The report pointed out:

> "The word 'right' appears to have been employed to describe what is merely the opportunity of the parties to choose an authorized alteration in local court

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11/ "The Federal Magistrates System, Report to the Congress by the Judicial Conference," December 1981, p. 50.

procedure. There is no right to demand a magistrate rather than a judge. In fact, no magistrate may be reasonably available to hear the case. Such a result would effectively divest the court of its ability and responsibility to control and manage its civil docket and supervise its magistrates."

The Conference recommended that the first sentence of 28 U.S.C. 636 (c)(2) be amended to read:

> "If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of courts shall notify the parties in a civil action of the 'availability' of a magistrate to exercise such jurisdiction."

This revision removes the phrase "right to consent" which the Conference believes should relieve the concerns that the act prohibits district judges from removing cases from magistrates.

We believe that the Conference's position that the "right to consent" does not guarantee trial by a magistrate is persuasive. We note that 28 U.S.C. 636(c)(6) already specifies at least some ability to control cases. However, this section appears to apply only after a case has been referred to a magistrate and the judge wishes to regain jurisdiction. The section provides:

> "The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection * * *."

We endorse the thrust of the Conference's recommendation to clarify 28 U.S.C. 636 (c)(2). However, we believe two concepts should be retained in this section. First, the language should continue to require the clerk of the court to inform the parties that to have their case handled by a magistrate, mutual consent is necessary. Second, the language should continue to convey the notion that consent usually will result in a magistrate exercising jurisdiction. We believe that the principles contained in section 636(c)(6), which allow a judge to vacate a referral to a magistrate, should also apply when a judge wishes not to refer a case to the magistrate, even though the parties have consented. Under section 636(c)(6), the court is required to show good cause when vacating a referral to a magistrate. However, under the Conference's recommended language change, it appears that a court could opt at any time not to refer a case to a magistrate without stating a reason. We believe that to allow the court to deny referral to a magistrate after the parties have consented to a magistrate's exercise of jurisdiction, without any stated reason, such as complexity of the case

or court workload, would undermine the public's confidence in the system.

Therefore, we believe that 28 U.S.C. 636(c)(2) needs to be revised to eliminate the confusion regarding judicial authority to retain control of civil cases. However, any revision should require the court or the judge to state the reason why consent cases were not referred to a magistrate.

THE JUDICIAL CONFERENCE COULD HELP MAKE THE CONSENT TO TRIAL NOTIFICATION PROCESS MORE CONSISTENT AND EFFECTIVE

The act prescribes in general and nonspecific terms the procedure for notifying parties in a civil case that a magistrate, in lieu of a district judge, could conduct and enter a judgment in a civil case. This duty is assigned to the clerk of the court. Further, the act forbids judges and magistrates from attempting to persuade or induce any party to consent. We found that for the most part the procedures used by the clerks were perfunctory and would do little to encourage consent among willing parties. We also found that the degree of involvement by judges in the notification process varied extensively. There was a lack of consensus regarding what constituted "persuading and inducing." Willing parties must have a meaningful opportunity to consent to magistrates' jurisdiction over their civil matters in order for magistrates to assume a significant part of judges' civil case workload. Therefore, both an effective notification process and clear guidance regarding how the court may notify parties of the opportunity to have their cases handled by magistrates, without violating the voluntary nature of consent, are needed. The Judicial Conference should take an active role in developing appropriate guidance for district judges and clerks of the court on these matters.

Inconsistent views on "persuading and inducing"

The act forbids judges or magistrates from persuading or inducing parties to consent to trial before a magistrate. Section 636(c)(2) of Title 28 states:

> "The decision of the parties shall be communicated to the clerk of the court. Thereafter, neither the district judge nor the magistrate shall attempt to persuade or induce any party to consent to reference of any civil matter to a magistrate. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent."

Judges have interpreted this section differently and wide variations of judicial involvement exist in the parties' decision to consent. We discussed this issue with 60 judges; 36 believed that informing litigants that their cases may possibly be heard by a magistrate does not violate the statute. Sixteen of these judges said they occasionally discuss this possibility with litigants while 11 others said they do so routinely. Yet, 17 other judges believed such discussions violated the statute. The remaining 7 judges expressed no opinion on this issue.

The language of the act does not specify the extent to which a judge or magistrate can discuss the possibility of consent with litigants. The implementation of this portion of the act lacks much of the consistency that was a congressional concern prior to and since initial passage of the act and suggests that clarification is desirable.

There needs to be a better balance between informing litigants of their option to have cases tried before a magistrate and protecting litigants from being coerced by judges or magistrates to consent to having their civil cases tried by magistrates. The act itself is mute on this point and provides no guidance regarding where the balance lies. We believe that in lieu of statutory guidance, the Judicial Conference, as the Federal courts' primary policymaking body, should provide advice and guidance to the district courts so that the civil trial provisions of the act will be effectively implemented. However, because the act designates the clerk of the court as responsible for notifying litigants that consent to a magistrate's jurisdiction is possible, the Conference should consider the role of the clerks before providing any advice or guidance to the courts.

Following up on initial notifications can increase the use of magistrates

We found that in the nine district courts where magistrates are designated to try cases, the clerks of the court are notifying litigants of their right to have their cases tried before a magistrate. (One district court began its system during our fieldwork.) However, only the clerk of the Oregon district court actively seeks litigants' responses to notifications. In the other district courts notification is a perfunctory act with little, or no, followup to obtain responses or determine if notifications were received and understood. The Oregon district court clerk's office is particularly aggressive and conscientious in notifying parties of the availability of magistrates to try their cases, and the approach is producing additional consents to magistrates jurisdiction.

In all nine district courts, the clerks' offices notify in writing each party of their right to trial before a magistrate.

The written notice is, for the most part, provided at the time of filing. Whereas in eight of the districts there is generally no further contact, the Oregon district court has implemented a followup process. Prior to assigning cases for trial, the clerk or a deputy clerk will personally contact litigants who did not respond to explain that the option to consent still exists. The clerks advised us that they have frequently found that litigants had not previously considered the matter despite the written notice.

The chief deputy clerk attributes the lack of initial consideration to:

--The written notice may have been lost in the surge of paperwork involved in the initial filing and was not the reminder it was intended to be.

--It was too early at filing for the parties to know if they wished to consent. As a case progresses, they have a better idea of whether consent to a magistrate is a practical matter.

He also added that civil cases sometimes drag on so long that the litigants will have had a change of heart and will consent if reminded of the option. The district court has had success in obtaining additional consents through the followup approach. For one 10-month period in calendar year 1981, parties in about 27 percent of the eligible cases in the Portland division consented to trial before a magistrate. The district court reported that a larger portion consented in the Eugene division where there is a resident magistrate but no resident district judge. While this level of consent undoubtedly in large part reflects the esteem the bar holds for this district's magistrates, it also reflects the effectiveness of the clerk's procedures.

In commenting on our report, the Magistrates Committee and the Administrative Office stated that they addressed both the role of the district judge and the notification of litigants in their February 1980 "Guidelines to Implement the Federal Magistrate Act of 1979." This document was distributed to all district judges, magistrates, and clerks of court. Nevertheless, they said they will consider clarifying and republishing the guidelines. However, they added that the Conference is limited by the strictures of the Federal Magistrates Act of 1979 and its legislative history. (See app. XII.)

CONCLUSIONS

The civil trial provisions of the Magistrates Act are being interpreted in some courts in a manner which precludes magistrates from exercising jurisdiction over civil matters. Certain interpretations of the "right to consent" language have caused some courts to restrict their magistrates from trying civil cases. By not being able to conduct and enter judgments in any civil matters, these magistrates have less opportunity to help reduce the burden on district judges. This appears to be inconsistent with the Congress' expectations from enactment of the 1979 amendments to the act.

Further, the provision of the act which protects the voluntariness of consents is being implemented quite differently. While the act prohibits judges from "persuading or inducing" litigants to consent to magistrate jurisdiction, it does not describe the nature or degree of proper involvement by judges. As a result, the involvement of the judges ranges from intentionally not mentioning the possibility of consent to openly suggesting such. This broad variation appears to be also inconsistent with the Congress' intent in enacting the 1979 amendments.

The act charges the district clerk of court with the responsibility for notifying parties of the opportunity to consent to magistrate jurisdiction. The method used to notify parties impacts the effectiveness of the system. Even though some guidance has been disseminated to the clerks, we believe that additional guidance is needed to more effectively emphasize the need for following up on the original notifications issued. While all nine districts in our review which allowed magistrates to exercise trial jurisdiction were initially notifying litigants of their options, only one was following up with additional personal contacts. This district has found that the followup is obtaining additional consents.

The Congress did not intend that the magistrates system be identical in each district court; however, it did intend some degree of consistency and uniformity. Presently, the opportunity to have magistrates hear civil cases is being affected by the various interpretations of the act and by district courts not following up initial notifications given to litigants on the opportunities to use magistrates to hear their case. We believe that the only factors dictating whether magistrates hear civil cases should be the district courts' workloads, the desires of the litigants and significant issues of law. Accordingly, we believe the other barriers should be eliminated.

RECOMMENDATION TO THE CONGRESS

In order to clarify the authority of district judges to manage the courts' caseload and maintain control over specific cases, we recommend that the Congress amend 28 U.S.C. 636 (c)(2) by adding the following:

> "The designation of a magistrate to conduct proceedings in a jury or non-jury civil matter under this section shall not preclude the district court from exercising jurisdiction over any case on its own motion. The district judge shall, however, advise consenting litigants of the reason their matter is not being referred to a magistrate."

RECOMMENDATION TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

We believe that the Judicial Conference, as the policy-making body of the Federal judiciary, should provide additional guidance to the district courts regarding the implementation of the civil trial provisions of the Magistrates Act. Specifically, the Conference should explain the roles for district judges in advising litigants of the opportunity to consent and should identify ways for district clerks to more effectively execute their notification responsibilities, including the use of followup procedures.

AGENCY COMMENTS AND OUR EVALUATION

Three district courts which addressed the subject of civil trial provisions of the act agreed with our conclusions and recommendations. The Administrative Office, the Magistrates Committee, and two other districts generally agreed with our conclusions but expressed reservations concerning our recommended legislative change. Their reservations and our response follow. The other six districts either did not specifically address the subject or did not respond at all.

While the Magistrates Committee, Administrative Office, and the Maryland district believed an amendment to 28 U.S.C. §636(c)(2) was necessary, they disagreed with our proposed amendment. They believed that district judges should continue to exert full control over their caseloads and exercise general supervision over the delegation of work to magistrates. In this regard, they believed our proposal appeared to divest a district judge of such authority because it called for the judge to show good

cause in order to maintain jurisdiction over a case. They further believed that their proposed amendment eliminated the confusion regarding judicial authority without appearing to divest judges' control over their cases.

To eliminate the concern expressed about judicial control of cases by judges, we deleted the phrase "good cause" so that there is no misunderstanding as to the judges' control over their cases and the referral of matters to magistrates. Although we agree with the thrust of the Conference's proposal, we believe our revised recommendation will better serve the long-term development of the magistrates system. It would retain in this section of the act a concept of required mutual consent, with the consent usually resulting in a magistrate exercising jurisdiction. Further, our recommendation would reinforce the public's confidence in the magistrates system by requiring that district judges inform consenting litigants of the reasons for denying referrals. The public's confidence in the magistrates system could be shaken if a judge did not allow a magistrate to handle a case, after the litigants consented, without an explanation of the judge's rationale for deciding to hear the case. If a judge decided to hear the case, it could be viewed by the public as a reflection of a lack of confidence in the abilities of the magistrates by the district judges. To avoid such an appearance, a statement explaining the reasons for not referring the case to a magistrate should be required.

The Oregon district advised us that any amendment to 28 U.S.C. §636(c)(2) is unnecessary; however, it stated that it would not object to such a change. It stated that its district does not have any particular problem if the amendment is passed so long as it is clear that cases can be shifted from judge to magistrate, or vice versa, as calendar conditions warrant. The district stated it moves cases in such a manner now without any type of order vacating a referral. We concur with the district's position that a formal order is unnecessary. Our recommendation only calls for a judge to state the reason, which may or may not take the form of a formal order, for not allowing a case to be heard by a magistrate.

PROFILE OF THE DISTRICTS INCLUDED IN GAO'S REVIEW

	Number of judges (note a)	Number of full-time magistrates (note a)	Year ended June 30, 1981 Cases Filed	Terminated
Nationwide	516	204	201,387	198,172
District				
District of Columbia	15	3	3,855	3,842
Massachusetts	10	4	3,956	8,105
Rhode Island	2	1	856	632
Connecticut	5	3	2,302	1,958
Maryland	9	5	3,825	3,439
Louisiana Eastern	13	5	5,805	5,807
Ohio Northern	10	4	3,780	3,282
Ohio Southern	6	3	3,315	3,042
California Central	17	6	7,473	7,140
California Southern	7	3	2,658	2,885
Oregon	5	3	2,215	2,196
Total	99	40	40,040	42,328
Percent of Nationwide	19	20	20	21

a/Number of positions in existence on June 30, 1981. Judgeships are created by an act of the Congress while magistrate positions are created by the Judicial Conference of the United States, subject to congressional appropriations.

APPENDIX II

UNITED STATES MAGISTRATE POSITIONS

AUTHORIZED BY THE JUDICIAL CONFERENCE

Fiscal year	Total positions	Full-time positions	Part-time positions	Combination positions
1971	518	61	449	8
1972	546	83	450	13
1973	561	90	455	16
1974	567	103	447	17
1975	541	112	411	18
1976	487	133	337	17
1977	482	150	316	16
1978	487	164	305	18
1979	487	176	290	21
1980	488	196	271	21
1981	488	204	263	21
1982	490	217	253	20
1983	483	223	241	19

Note: Positions for the following fiscal year's budget are approved at the semi-annual meetings of the Judicial Conference. Thus, positions approved in the fall of 1980 and the spring of 1981 are for fiscal year beginning October 1981.

APPENDIX III

NUMBER OF MATTERS DISPOSED OF BY MAGISTRATES FOR THE YEARS ENDED JUNE 30, 1981 AND 1982

Trial jurisdiction cases	1981	1982
Misdemeanor cases (other than petty offenses)	14,208	13,589
Petty offense cases	80,944	73,136
Total	95,152	86,725
Preliminary proceedings in felony cases (Duties formerly performed by U.S. commissioners)		
Grand jury returns	2,626	3,082
Search warrants	5,442	6,170
Arrest warrants	11,634	11,702
Initial appearances	33,285	31,844
Bail reviews	6,828	8,301
Preliminary examinations	3,570	4,650
Arraignments	18,981	21,296
Material witnesses	6,865	6,833
Other matters	3,128	4,580
Total	92,359	98,458
Criminal additional duties		
Pretrial conferences	3,199	3,214
Motions	18,652	20,119
Calendar calls	884	857
Other matters	2,506	2,793
Total	25,241	26,983
Prisoner litigation	14,817	16,551
Civil additional duties		
Pretrial conferences	23,109	28,314
Motions	51,015	58,150
Calendar calls	812	1,174
Special masterships	564	588
Civil consent cases	1,933	2,452
Social security reviews	4,101	4,532
Other matters	2,056	1,636
Total	83,590	96,846
Total	a/311,159	a/325,563

a/These totals include 2,561 and 3,035 evidentiary hearings conducted in 1981 and 1982, respectively.

APPENDIX IV

PROCEEDINGS CONDUCTED PER U.S. MAGISTRATE DURING THE 12-MONTH PERIOD ENDING JUNE 30, 1981, IN THE DISTRICTS GAO REVIEWED

District	DC	MA	RI	CN	MD	E. LA	N. OH	S. OH	C. CA	S. CA	OR
Duties											
Misdemeanors	35	125	17	3	1,823	94	77	26	244	1,764	84
Preliminary proceedings "Commissioner Duties"	535	333	153	163	287	219	168	147	457	2,016	165
"Additional Duties" 28 U.S.C 636(b)	438	1,127	1,341	1,199	243	1,710	702	674	672	1,034	861
Criminal matters	225	550	152	75	115	295	223	34	379	686	98
Pre-trial conferences	-	(a)	27	(a)	(a)	15	31	(a)	-	165	-
Non-dispositive motions	105	429	31	10	1	129	105	5	14	34	25
Dispositive motions	(a)	9	3	16	-	6	10	-	(a)	32	1
Other matters	120	112	91	49	114	145	77	29	365	455	72
Civil matters	213	577	1,189	1,124	128	1,415	479	640	293	348	763
Pretrial conferences	44	22	277	110	11	458	89	53	7	129	52
Non-dispositive motions	123	412	727	775	22	855	269	121	79	97	514
Dispositive motions	6	80	87	152	7	9	17	133	39	17	86
Prisoner petitions	-	12	14	28	47	60	26	190	84	3	78
Social Security	-	4	63	15	18	15	51	102	47	22	6
Other matters	40	47	21	44	23	18	27	41	37	80	27
Civil consent cases	9	(a)	-	44	7	(a)	32	7	-	15	26
Without trial	6	(a)	-	41	5	-	29	3	-	14	13
With trial	3	(a)	-	3	2	(a)	3	4	-	1	13
Number of authorized full-time magistrates	(3)	(4)	b/(1.2)	(3)	(5)	(5)	(4)	(3)	(6)	(3)	(3)

a/Average less than one.

b/Includes one full-time magistrate and one full time clerk-magistrate who spends approximately 20 percent of his time performing magistrate-type duties. The full-time magistrate is not authorized to conduct civil jury trials.

APPENDIX IV

ABBREVIATIONS USED IN APPENDIXES IV AND V

C. CA - Central district of California

CN - District of Connecticut

DC - District of the District of Columbia

E. LA - Eastern district of Louisiana

MA - District of Massachusetts

MD - District of Maryland

N. OH - Northern district of Ohio

OR - District of Oregon

RI - District of Rhode Island

S. CA - Southern district of California

S. OH - Southern district of Ohio

PROCEEDINGS CONDUCTED PER U.S. MAGISTRATE DURING THE 12-MONTH PERIOD ENDED JUNE 30, 1982, IN THE DISTRICTS GAO REVIEWED

District	DC	MA	RI	CN	MD	E. LA	N. OH	S. OH	C. CA	S. CA	OR
Duties											
Misdemeanors	46	97	15	7	1505	63	19	40	298	1,263	92
Preliminary proceedings "Commissioner Duties"	513	504	324	225	342	313	256	186	809	2,633	187
"Additional Duties" 28 U.S.C. 636(b)	451	1,198	1,477	1,042	135	1,533	692	601	398	474	771
Criminal matters	91	629	105	20	36	114	90	12	83	225	48
Pre-trial conferences	-	3	53	-	-	10	24	-	2	154	1
Non-dispositive motions	46	578	43	12	1	92	50	2	10	24	36
Dispositive motions	1	37	5	4	1	2	10	1	1	4	5
Other matters	44	11	4	4	34	10	6	9	70	43	6
Civil matters	360	569	1,372	1,022	99	1,419	602	589	315	249	723
Pretrial conferences	115	28	195	142	17	489	132	57	26	142	69
Non-dispositive motions	230	444	995	654	16	782	301	117	127	83	454
Dispositive motions	7	62	73	128	5	10	41	30	47	4	101
Prisoner petitions	-	19	78	73	32	83	54	214	85	-	48
Social Security	-	9	11	16	22	20	46	93	28	10	7
Special masters	4	2	-	1	-	16	1	25	-	1	-
Other matters	4	5	20	8	7	19	27	53	2	9	44
Civil consent matters	12	2	-	49	6	1	38	6	3	24	39
Without trial	6	1	-	48	3	1	32	3	2	22	25
With trial	6	1	-	1	3	-	6	3	1	2	14
Number of authorized full-time magistrates	(3)	(4)	a/(1.2)	(3)	(5)	(5)	(4)	(3)	(6)	(3)	(3)

a/Includes one full-time magistrate and one-full time clerk-magistrate who spends approximately 20 percent of his time performing magistrate-type duties. The full-time magistrate is not authorized to conduct civil jury trials.

APPENDIX V

APPENDIX VI

United States District Court
Southern District of California
940 Front Street
San Diego, California 92189

Chambers of
Howard B. Turrentine
Chief Judge

February 16, 1983

Mr. William J. Anderson,
Director
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

I have reviewed the GAO Report on the U.S. Magistrates System and make the following comments:

1. The staff report is an excellent history of the U.S. Magistrates System created of the Federal Magistrates Act of 1968 as amended.

2. The report correctly details the use of the magistrates in the Southern District of California.

3. There is no question that the active use of magistrates by a district court judge greatly increases the efficiency of the trial judge.

4. I agree with the proposed staff recommendation to Congress and to the Judicial Conference of the United States.

Very truly yours,

Howard B. Turrentine

HOWARD B. TURRENTINE

APPENDIX VII

United States District Court
Southern District of Ohio
Cincinnati, Ohio 45202

Chambers of
Carl B. Rubin
Chief Judge

March 1, 1983

William J. Anderson, Director
United States General Accounting Office
General Government Division
Washington, D.C. 20548

Re: Proposed Report on the
Magistrates System

Dear Mr. Anderson:

Thank you for sending me a copy of the draft report regarding the use of United States Magistrates. I agree completely with your conclusions that the Office of the United States Magistrate is under utilized in most districts and has a potential for solving some of our troubling problems.*

It has been my conviction for quite some time that the federal judicial system is in effect a "two tier" system. We have seen a great influx of cases that do not necessarily require an Article III Judge to consider them. In the Southern District of Ohio, close to 40% of our docket consists of social security appeals, prisoners' civil rights claims, student loan collections and foreclosures. While these are essentially "nontriable" cases, the vast number of them generates some problems that require intervention either by a Magistrate or by a District Judge. It would seem to me that the most efficient use of manpower is to have these matters disposed of by the Magistrates in order that the District Judges might concentrate on cases that are not referable.

I agree with your conclusion that the Magistrates' jurisdiction should be expanded. This would be by far the most efficient and least expensive way to deal with the ever increasing District Court caseload.

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*GAO note: This term was not used by GAO in this report. However, it is GAO's belief that magistrates can be better utilized.

APPENDIX VII

Thank you for including me on the list of those to whom you sent the draft of your report.

Very sincerely yours,

Carl B. Rubin, Chief Judge
United States District Judge

APPENDIX VIII

FRANK J. BATTISTI
CHIEF JUDGE

United States District Court
Northern District of Ohio
Cleveland, 44114

March 3, 1983

William J. Anderson, Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

I have reviewed the draft report on the Magistrates System and, for the most part, I am in agreement with its major conclusions. I certainly agree that the magistrates are making a significant contribution to the overall operation of the District Courts, and believe that such contribution should be recognized by a more substantial effort on the part of all concerned to make the bar aware that the magistrates are qualified judicial officers in whom they can repose their trust.

There is, however, one aspect of the draft that speaks to a major issue as to which I cannot fully concur in the report's recommendation. I speak of the matter of uniformity of approach to assignment of duties in multi-judge, multi-magistrate courts.

My views on this subject can be well illustrated by reference to the present practice in the Northern District of Ohio, which although surveyed is not specifically commented upon in the Report.

While the allocation of magistrates for the entire Northern District is four, the fact is that one is situated in Toledo serving the members of the court there, and another is in Akron and his time is heavily devoted to affairs of that branch of the Court. Consequently, as a practical matter the two magistrates in Cleveland are the primary resource for the seven regular and one senior judge on our court.

Ours is a district in which there is a variance between the members of the court as to assignment of "other duties" to the magistrates. Most members of the court assign all Social Security reviews to a magistrate, although some do not. Several assign their habeas corpus actions. A lesser number assign a number of general civil actions for pretrial supervision. One member of the court regularly calls upon the magistrates to conduct status conferences and settlement pretrials. Each of the judges has on occasion sent an emergency matter to a magistrate or called upon a magistrate to assist in the pretrial development of a particularly troublesome or unique case.

In our court the social security reviews and, to a lesser extent, habeas corpus filings present a major dilemma insofar as the use of the magistrates is concerned. We have a very heavy filing of Social Security appeals, and the numbers are increasing. If, pursuant to a uniform rule, all record reviews were assigned to the magistrates for a Report and Recommended Decision, I do not think they would have time to devote to anything else. At this time each of them is being assigned over 100 such cases per year, and in addition is receiving another 30 or more upon consent of the parties.

While the obvious, and simple, answer to this problem would be to withdraw record reviews from the magistrate's area of responsibility, as some other Districts have done, I do not believe that that is a satisfactory response in a court serving a major urban population center producing a large number of such reviews. In my opinion it was this type of repetitive, time-consuming detailed "paper litigation" which Congress intended to shift away from district judges, to magistrates, so that their time could be devoted to more complex cases. Beyond this, the magistrates develop an expertise in these areas which a short-term law clerk does not acquire. In my discussions with the Cleveland magistrates they estimate that they can complete a Social Security or habeas file in 20% of the time it would take a law clerk to do so. In many cases no objections are taken from the Magistrate's ruling, so that the amount of time the Court must devote to the file is reduced from that which would be required if a law clerk reviewed the case prior to the judge's consideration

If we had a standardized rule requiring all record reviews to go to magistrates they would become bogged down in those tedious tasks. Similarly, it would be impossible for the two Cleveland magistrates to handle status conferences and pretrials for all civil filings. If that were feasible, I doubt that all members of our court would agree to such a rule.

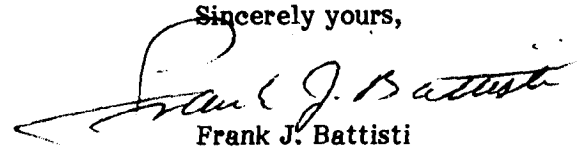
A factor that cannot be disregarded is that in addition to the "other duties" assignments they receive, our magistrates must administer expanding personal dockets. Each of them, based upon current projections, will have a very active trial calendar this year.

While perhaps a uniform "other duties" rule might work in districts having a different judge-magistrate ratio on a lesser load of record reviews, I fear that adoption of such a rule in our court would result in one of two equally unpalatable results. Referring all record reviews could result in the magistrates becoming specialized law clerks, with no time to do anything else. Total removal of such responsibility would deprive the court of the magistrates' expertise, and increase the backlog of such cases.

Our flexible non-uniform approach to utilization of the magistrates service allows the magistrates the opportunity to participate in meaningful and stimulating aspects of the court's business, while maintaining a reasonable flow of record reviews.

Based upon these considerations I disagree with the recommendation, contained at page 34 of the report, that the Judicial Conference of the United States " . . . require all district courts to . . . develop within their respective districts a uniform approach for using magistrates." *

Sincerely yours,



fjb:ffk

Frank J. Battisti
Chief Judge

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*GAO note: Recommendation was revised to delete the word "require" and use "encourage". Also, the word "uniform" has been deleted from the report and replaced with "comprehensive".

APPENDIX IX

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND 97205

CHAMBERS OF
JUDGE JAMES M. BURNS

March 9, 1983

William J. Anderson, Director
United States General Accounting
Office
Washington, D.C. 20548

"Changes Needed to Fully
Fully Realize the Benefits
of the Magistrates System";
your letter of 2/10/83

Dear Mr. Anderson:

I am happy to respond as follows:

1) The Congress clearly intended the Magistrates system to be flexible. Each district needs flexibility to "deal with its own individual needs and situations." (P.15) Flexibility should be retained. We should not have to march to the steps of the District Courts in Manhattan, or in South Dakota, for example; nor should those Districts have to march to ours. If they evolve a technique or method that works well, I expect we would probably try it out, and, if it works well here, install it; we would hope the reverse would be true.

2) Flexibility should not, however, be an excuse for lack of strong encouragement - to those Districts who dont't make much use of their magistrates - to make good use of them. Such encouragement should come from the Judicial Conference and Councils. It should also come from the Federal Judicial Center, which is the education and training arm of the third branch. Title 28 U.S.C. § 620-629. With the consent of Senior Group Director John M. Ols, Jr., I sent a copy of the Draft Report to the Director (and the head of the Education and Training Branch) of the Center, along with a letter suggesting that effective usage of magistrates ought to have a spot on the seminars regularly conducted for new district judges. Mr. Ols received a copy of my letter. I have a hunch, though, that the most effective encouragement comes when judges get

together at conferences, etc.; informal sessions among judges, where experiences are shared, are more likely to effect a real change by those who have not previously used magistrates effectively.

3) We do not believe that the statute § 636(c)(2) needs amending in the fashion described on pages 36-38 , and summarized on page iii. We don't have any particular problem if amendment if passed, however, so long as it is clear that cases can be shifted from judge to magistrate, and vice versa, as calendar conditions warrant. Indeed, we do not issue any kind of order "vacating" a referral, in those cases which, though initially assigned to a magistrate, are later taken over by a district judge. If Judge Leavy or Judge Juba gets in a bind, and cannot try a case, he simply calls me up, and I take it (if I can). This is the same thing that happens if I get too busy and one of the magistrates can take it, assuming, of course, that consent exists. If some other district wants - at that point - to prepare and sign a piece of paper called an "Order Vacating Referral to Magistrate," let them do it. We see no need to do that here.

4) We, in the District of Oregon, are flattered by the generous references to our system. We believe that quiet and persistent encouragement, at all levels - Judicial Conference, Judicial Councils, and other forums - should be the order of the day. Indeed my own impression is that most of the Districts in the Ninth Circuit have climbed aboard the bandwagon in recent years. But the key remains this. First, you must select the best (picking out the most highly rated state court judge and recruiting him or her), so the Bar will be confident, and will, in many or most instances, consent. Second, the District Court must show the magistrates - and the bar - its confidence, by delegating the full range of duties available under the statute. We wouldn't have gotten George Juba, Ed Leavy1/ or Mike Hogan - or kept them longer than 60 days - if all we delegated was arraignments, search warrants, discovery squabbles and prisoner petitions.

1/ Judge Leavy has been the magistrate here who has been used most as a "settlement judge"; Judges Juba and Hogan also occasionally so act. But Ed Leavy has a "feel" or "knack" for settling cases. It is, I am convinced, not capable of definiton or description beyond that. He and I have recently reviewed his work as settlement judge over the past 14 months. He had settlement conferences in 60 cases; all but 8 settled or appear to be about to settle. Of a recent group of 10 cases, the total estimated trial time, had they gone to trial, would have been about 41 days; a rough estimate of "settlement judge" time involved is about 3-4 days. I would be glad to supply details if you wish.

Very truly yours,

James M. Burns

JMB:lc
cc: Mr. John M. Ols, Jr.
Judges Skopil, Juba,
Leavy and Hogan

GAO note: Page references have been changed to correspond to final report.

APPENDIX X

CHAMBERS OF
T. F. GILROY DALY
CHIEF JUDGE

United States District Court
District of Connecticut
United States Courthouse
915 Lafayette Boulevard
Bridgeport, Conn. 06604

March 9, 1983

Mr. William J. Anderson, Director
United States General Accounting Office
Washington, D. C. 20548

RE: Draft Report - Use of Magistrates

Dear Mr. Anderson:

I received the draft report to Congress on the use of U. S. Magistrates System, and read with great interest the variety of ways different Districts utilize their Magistrates.

All the Judges in the District of Connecticut have been apprised of the report on the use of Magistrates. We have determined to retain as much flexibility as possible in regard to how the Magistrates in this District will be used.

Thank you very much for the time and effort that went into the report and your interest.

Sincerely,

TFGD:efm
cc: A. Vieira, Boston

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND
314 FEDERAL BUILDING
PROVIDENCE, RHODE ISLAND 02903

FRANCIS J. BOYLE
CHIEF JUDGE

March Tenth, Nineteen Hundred Eighty-Three

Mr. William J. Anderson
General Government Division
United States Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

The draft of a Proposed Report "Changes Needed to Fully Realize the Benefits of the Magistrate's System" has been reviewed by the judges of this Court.

It is the belief of the judges of this Court that optimal use is now made of the magistrates of this Court.

According to Appendix V of the report, the District of Rhode Island has 1.2 magistrates. The full-time magistrate is not authorized to conduct civil jury trials. The other nine districts considered in the report each have at least three full-time magistrates. Although gross numbers are not necessarily instructive, a simple comparison of the sheer number of the diverse matters handled by magistrates in the District of Rhode Island establishes that, except for civil jury trials, magistrates services are fully utilized in this district. With less than half of the number of magistrates of all other districts included in the report, the number of matters handled per magistrate in almost every category is equivalent to and in some instances exceeds the other nine districts. (Appendix V). *

The reason for the large number of matters handled by magistrates in this district is that they are employed in areas where their services are most urgently required. This use of

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*GAO note: Footnote in appendixes IV and V was revised to reflect these comments.

APPENDIX XI

March Tenth, Nineteen Hundred Eighty-Three

Mr. William J. Anderson
General Government Division

Page Two

magistrates has resulted in an increased rate of termination of cases, in spite of a 1982 total of 703 pending cases per judge. The rate of termination per judge in 1982 was 455 actions per judge. An additional judge has been approved for this district by the Judicial Conference of the United States and is pending congressional action.

The district had no active senior judge until July, 1982. A new district judge took office in October of 1982. In the first six months of the year beginning in July, 1982 (1983) more than 600 civil cases have already been terminated. Clearly, this district needs the services of another district judge.

The assignment of civil jury trials to the fulltime magistrate would not improve further the number of terminations since the full-time magistrate is now fully engaged, and the time required for civil jury trials would merely diminish his present usefulness. Time applied by a full-time magistrate to civil jury trials would only effect a change in the title of the officer conducting the trial, since judges would then be required to attend to matters now handled by the magistrate.

Sincerely yours,

Francis J. Boyle, Chief Judge

FJB:geg

APPENDIX XII

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

March 11, 1983

Mr. William J. Anderson
Director, General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

I appreciate the opportunity to review and comment on your proposed report to the Congress on the Federal Magistrates System. The draft report has been reviewed by Judge Otto R. Skopil, Jr., Chairman of the Judicial Conference Committee on the Administration of the Federal Magistrates System, and by the Division of Magistrates of this office and other members of my staff. We are in agreement in our views regarding the report and jointly offer the following comments. I should note that the Judicial Conference Committee will next meet in June and will consider the comments and recommendations of your office at that time.

At the outset, we commend you and your staff for the report's professional and thorough treatment of this complex and difficult subject area. We believe that the report is positive in its approach and that it contains many constructive comments and recommendations on the utilization of United States magistrates.

The Judicial Conference, through its Magistrates Committee and through the Division of Magistrates of this office, is engaged in a continuing oversight process in an effort to improve this evolving system. Many of the matters addressed in the report raise concerns which have been considered by the Judicial Conference. As the report correctly notes, the Conference in its supervisory role has endeavored to ensure the efficient use of magistrates. These efforts have been described in "The Federal Magistrates System: Report to the Congress by the Judicial Conference of the United States" (December 1981).

We strongly concur in the report's overall conclusion that the magistrate system is working well indeed. Knowing that even greater efficiency is possible, however, we agree that improvements can be achieved. The remarks which follow focus on the report's proposed recommendations to the Judicial Conference and the Congress. They are designed, constructively, to clarify and improve your document by adding some factual detail that we believe is necessary. In no sense should our suggested improvements be considered as detracting from our overall approval of your report.

APPENDIX XII

The Effective Utilization of Magistrates. The first recommendation in the report is that the Conference encourage district courts to utilize magistrates more fully by increasing their duties and roles as circumstances permit. It is true that some courts use magistrates more extensively than others and that some judges are hesitant to utilize magistrates to the maximum extent permitted under the law. We would suggest, however, that an affirmative statement be made in the report that most courts do, in fact, use their magistrates fully and as intended under the Federal Magistrates Act as noted in the 1981 Conference report. Moreover, a trend toward greater utilization of magistrates is clearly evident, and it reflects the courts' growing confidence in this relatively new system.

As your report notes, a large body of information on the effective use of magistrates is available for district court judges. In addition to the sources already mentioned, your report should note that the Magistrates Committee of the Judicial Conference has distributed to each federal judge, magistrate, and clerk of court: (1) model local rules of court on the use of magistrates; (2) suggested procedures for the reference of civil and criminal matters to magistrates; (3) guidelines for implementing the 1979 amendments to the Act; and (4) checklists on the jurisdiction and proper use of magistrates.

The Federal Judicial Center at its continuing education programs for judges and for magistrates has in the past devoted considerable time to the effective use of magistrates. Moreover, the Office of Management Review of this agency conducts periodic on-site inspections and reviews to analyze the operations of each district court, including the court's use of magistrates. The purpose of these reviews is to identify areas in which the operations could be made more efficient and to recommend changes to improve each court's effectiveness and efficiency. In addition, the Division of Magistrates serves as a clearinghouse for information on the magistrates system. It regularly distributes written materials on the jurisdiction and use of magistrates and provides advice on these matters to judges, magistrates, and other court officers.

When reviewing district court requests for additional magistrate positions or the continuing need for existing magistrate positions, the Magistrates Committee of the Judicial Conference carefully considers a court's utilization of its existing magistrate resources. The effective use of existing positions is one of the three major criteria which are considered by the Judicial Conference prior to the authorization of additional magistrate positions. In preparing the survey reports for the consideration of the Magistrates Committee, the Division of Magistrates consults with and advises the courts on the utilization of their magistrates.

In light of your finding that some courts under-utilize their * magistrates, it may well be beneficial for us to increase our efforts to emphasize the magistrates' expanded role in the judicial system. Nevertheless, while more may be accomplished in the future, we would like the report to note explicitly that the Judicial Conference has on many occasions stated its policy of encouraging the district courts to take full advantage of the provisions of the Federal Magistrates Act and to use their magistrates extensively. Moreover, your report should state that the comprehensive 1981 Conference report to the Congress strongly urged the full utilization of magistrates. This report has been provided to every judge of the district courts. We will, however, continue to explore with the Magistrates Committee additional ways in which communication of the Conference's policy can best be accomplished.

Uniform Use of Magistrates. The report's second recommendation to the Conference is to require district courts to develop within their respective districts a uniform approach for using magistrates in the most effective and efficient manner. We agree that assignments of duties to magistrates should be made after an appraisal of both the district court's needs and the most effective and efficient use of magistrates in view of these needs. In this connection, each court should be encouraged to develop an approach for using its magistrates based upon a careful review of its particular circumstances.

There are, however, several difficulties in requiring a district court to adopt a rigid plan mandating that each judge of the court utilize magistrates in a uniform manner. As noted in the 1981 Conference report, there are several reasons for allowing individual judges a degree of discretion in utilizing magistrates.

The conduct of pretrial proceedings and the techniques used for calendar management will vary among district court judges. While some judges participate actively in the early pretrial stages of litigation, other judges prefer a more passive role during this phase. Judges may also find it efficient to adapt their case management approaches to the various categories of cases that come before them. The assignment of duties to magistrates will predictably reflect the individual preferences of the judges and the varying demands of a court's caseload.

The flexible use of magistrates within a given court may also recognize the special skills or expertise of the individual members of the court. A magistrate skilled in negotiation and civil practice may likely be delegated to handle pretrial and settlement conferences by the court. Some judges, however, may wish to conduct their own pretrial conferences to acquaint themselves better with their cases and, therefore, choose to refer

*GAO note: The term underutilized is an Administrative Office term and was not used by GAO in this report. However, it is GAO's belief that magistrates can be better utilized.

APPENDIX XII

other types of matters, such as the review of prisoner litigation and social security appeals to magistrates.

While we agree that it would be beneficial for a district court to develop a "plan" for the use of magistrates, we would not ask each court to adopt a rigid approach. It would be preferable for your report merely to recommend that the Conference encourage each court to reappraise periodically its current use of magistrates and to review its needs on a district-wide basis to ensure the most efficient and coordinated use of its magistrates by the judges.

Communication of Criteria. The third recommendation to the Conference is that it disseminate information on a more formalized basis to the courts on the criteria used in authorizing the establishment of new magistrate positions and encourage the districts which meet those criteria to request additional magistrate positions.

There are several ways in which we do communicate the criteria under present practice. The criteria are included in the 1981 Conference report to the Congress which was distributed to all district judges. In addition, new chief judges are informed of the criteria in person at briefing sessions conducted at the Administrative Office. Whenever a request is made for a new magistrate position, moreover, a survey report delineating the criteria is submitted to the court for its review. If a request is denied by the Conference, it is also now our practice to inform the court in writing of the underlying reasons.

In view of your finding that some courts are nevertheless uncertain as to the criteria for authorizing new magistrates, we agree that more formal communication of the criteria is needed. The Magistrates Committee will certainly wish to consider ways to communicate its standards more effectively.

I should point out with respect to the second part of your recommendation that the Magistrates Committee has pursued a conservative policy in authorizing additional positions. The members have been sensitive to the need to hold down costs and have recommended additional positions only in those cases which present a strong and well-documented justification. As a result it has not been our policy to solicit requests for additional magistrate positions, although the subject often rises in our day-to-day dealings with the courts. The Division of Magistrates, however, does monitor the caseloads of the courts and magistrates and initiates informal reviews with courts which appear to need additional magistrate resources.

In light of your findings, the Magistrates Committee may wish to consider a more active role in authorizing magistrate positions. In this regard, you may wish to clarify your recommendation on page iv to state: "Further, the Conference and the Administrative Office should rely less exclusively on court-initiated requests and should identify those courts that should be encouraged to request additional magistrate positions."

Additional Magistrate Positions. The report states that there were 32 district courts which met the Judicial Conference criteria for an additional full-time magistrate position, but had not requested one in the two years prior to May 1982. We have obtained a listing of those districts from your staff and can now provide you with an update.

Since May of 1982 approximately one-half of the 32 districts have either been authorized an additional full-time magistrate or presently have a request pending before the Magistrates Committee. Additionally, in nearly all of the remaining courts, we have had informal discussions with key court personnel concerning the likelihood of additional magistrate positions.

Guidelines on Advice and Notification to Litigants. Your report makes two recommendations to the Judicial Conference with regard to the civil trial provisions of the Federal Magistrates Act: (1) that the Conference develop a policy regarding the role of district judges in advising litigants of their opportunity to have a case heard by a magistrate; and (2) that the Conference recommend to the clerks of court methods for notifying litigants of their opportunity to have a magistrate hear their cases.

The substance of each of these recommendations is addressed in the February 1980 "Guidelines to Implement the Federal Magistrate Act of 1979." These guidelines were prepared by the staff of the Administrative Office and approved by the Magistrates Committee of the Judicial Conference to assist the courts in establishing new court procedures and revising local rules and forms to comply with the provisions of the 1979 Act. They were distributed to all district judges, magistrates and clerks of court.

Nevertheless, in light of the findings of your report that there remains confusion and uncertainty among the district courts in this area, the Magistrates Committee will certainly wish to consider clarifying and republishing its guidelines on these points.

It should be noted, however, that in giving guidance to the courts on the most effective means of advising litigants of their opportunity to have a magistrate hear their cases, the Conference is limited by the strictures of the Federal Magistrate Act of 1979 and its legislative history.

Mr. William J. Anderson
Page Six

Proposed Amendment to 28 U.S.C. §636(c)(2). The final point on which I would like to comment concerns your recommendation that the Congress amend 28 U.S.C. §636(c)(2) to eliminate the confusion regarding judicial authority to retain control of civil cases. Your report discusses the language proposed by the Judicial Conference for an amendment to 28 U.S.C. §636(c)(2) and endorses the "thrust" of the Conference's proposal.

Your report, however, offers a different amendment which would provide that the designation of a magistrate to conduct proceedings under 28 U.S.C. §636(c) "shall not preclude the district court or judge from exercising jurisdiction over any case for good cause shown on its own motion." The requirement that the court be required to explain why all consent cases are not referred to a magistrate follows from a statement in the report at page 38 that:

> We believe that to allow the court to assume * jurisdiction, even though the parties have consented to a magistrate's exercise of jurisdiction, without any showing of just cause, such as complexity of the case or court workload, would undermine confidence in the system. (emphasis added)

It is the view of the Judicial Conference as set forth in its 1981 report at pages 49-50 that "[t]he option of the parties to have their case tried and disposed of by a magistrate does not operate to divest the judges of the district court of control over their own cases or general supervision over the delegation of work to the magistrates of the court." In that context, the approval of the judge to whom the case has been assigned should be obtained in order to perfect the reference of a case to a magistrate, even when the parties have consented to the disposition of the case by a magistrate.

Your amendment would require the judge to show "good cause" in order to retain jurisdiction over the case if the parties had consented to disposition by a magistrate. It is the view of the Judicial Conference, however, that the district court retains jurisdiction over the case and, regardless of the parties consent, the concurrence of the judge is needed before a case is removed from a judge to a magistrate.

We believe the amendment to 28 U.S.C. §636(c)(2) proposed by the Judicial Conference eliminates the confusion regarding judicial authority without appearing to divest an article III judge of control over his case. We are of the view that an article III

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*GAO note: Report language changed to more accurately reflect the proper role of authority in the courts. (See p. 38.)

APPENDIX XII

judge should continue to exert full control over his caseload, particularly in light of the comments expressed by the Supreme Court in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 50 U.S.L.W. 4892, 4900 n. 31 (June 28, 1982).

In conclusion, I wish to emphasize the point that I made at the outset. We consider this to be a very positive report containing many constructive comments and recommendations. I hope that our suggestions will be of assistance to you in preparing your final report.

Sincerely,

William E. Foley
Director

cc: Honorable Otto R. Skopil, Jr.

APPENDIX XIII

United States District Court
Post Office and Courthouse Building
Boston, Massachusetts 02109

CHAMBERS OF
ANDREW A. CAFFREY
CHIEF JUDGE

March 24, 1983

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

In response to your request, contained in your letter of February 10, 1983, for my comments on your proposed report to Congress on the use of the United States Magistrates system to assist the United States Courts' operation, I wish to advise as follows.

The reference to the use of Magistrates in the District of Massachusetts contained on page 17 of your report seems to be reasonably accurate in recounting what the nine Boston-based Judges in fact do. I express no opinion as to the accuracy of what your report says is the reason why a limited number of Judges do what they in fact do or think, vis a vis, the use of Magistrates.

Your report does not mention the fact that some members of the Court believe there is a substantial difference in the ability of the various Magistrates, which opinion in my judgment has serious impact on the individual Judge's decisions regarding the use of Magistrates.

Your report has statistical information regarding the use of Magistrates on pages 48 and 50 thereof, the accuracy of which I have not had the opportunity to statistically verify and for that reason, given the time GAO has invested in the study, I accept these statistics as factual.

I would like to note for the record that the physical limitations of this overage in grade courthouse

APPENDIX XIII

building, especially the shortage of courtrooms with jury trial facilities, most seriously impacts on the ability of the Magistrates to conduct jury trials, and consequently, on the willingness of the District Court Judges to make referrals to the Magistrates for full on-the-merits jury trials of civil and criminal cases.

Thank you for your courtesy in making available to me a draft of this proposed report.

Very truly yours,

Andrew A. Caffrey

GAO note: Page references have been changed to correspond to final report.

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

March 28, 1983

FRANK A. KAUFMAN
Chief Judge
Baltimore, Maryland 21201

William J. Anderson, Director
U. S. General Accounting Office
Washington, D. C. 20548

Dear Director Anderson:

I appreciate your sending me the draft report to the Congress on the use of the United States Magistrates System. The report gives an excellent summary of the history of the Magistrates System and makes many thoughtful recommendations as to how the system might be improved to further assist our courts in handling an ever-expanding caseload. I am glad to provide comment on the specific recommendations in the report.

As a general proposition, the report recommends that the Judicial Conference should take a more active role in promoting the efficient and effective use of magistrates. The first specific recommendation is that the Conference encourage district courts and judges who are restricting the use of magistrates to explore methods to increase their use. Additionally, it is recommended that the Conference disseminate information regarding the experience of judges and courts who have been using magistrates extensively. With regard to this recommendation, I recognize that there is a wide variation between judges as to the manner in which they utilize the services of magistrates. Many of these individual variations stem from local conditions and preferences of individual judges as to what matters they themselves feel most capable of handling and where they need help from the magistrates. My general sense of the development of the system, however, is that most courts and most judges are presently striving to use magistrates most effectively and that only a relatively few jurisdictions and judges are restricting their use. Therefore, I question the utility of the Judicial Conference undertaking an "encouragement program" aimed at the whole judiciary.

Secondly, it appears to me that the Judicial Conference has long been actively recommending the effective use of magistrates. For example, in the Report to the Congress in Dec. 1981 by the Judicial Conference on the Federal Magistrates System[1], it is stated at page 44:

> With regard to the delegation of judicial responsibilities to magistrates, the Judicial

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1/ This report was distributed to all federal judges.

APPENDIX XIV

> Conference has encouraged the district courts to take full advantage of the provisions of the Federal Magistrates Act and use their magistrates extensively. The Magistrates Committee of the Conference has distributed to the courts model local rules and suggested procedures for the reference of civil and criminal matters to magistrates, guidelines for implementing the 1979 amendments to the Act, and checklists on the jurisdiction and proper use of Magistrates. The Federal Judicial Center at its continuing education programs for judges and for magistrates has devoted considerable time to the effective use of magistrates. The Administrative Office, moreover, has served as a clearing house of information on the magistrates system and regularly distributed written materials and oral advice to judges, magistrates, and other court officers.

I also note that information regarding innovative uses of the magistrates system is frequently disseminated in publications such as The Third Branch, the various circuit newsletters, and A.B.A. and other private journals.

The second recommendation is that the Judicial Conference require all district courts to analyze their current use of magistrates and develop within their respective districts a uniform approach for using magistrates in the most effective and efficient manner. I think undoubtedly it would be useful for individual courts to be encouraged to have a periodic review of their use of magistrates and we try to do that in the District of Maryland through our own magistrates committee. However, because of the diversity of our system and the myriad variations in it, I have some difficulty with the concept of a "uniform" approach to the use of magistrates. In this connection, I note that the 1981 Judicial Conference Report already cited, comments on page 45:

> As is apparent from the findings of the New York study, there is no single, proper or uniform formula for the delegation of duties to magistrates. The caseload and the individual talents of the judges and magistrates of a district court should be viewed in totality. The specific manner in which the caseload is divided among the judges and the magistrates is necessarily a matter of local administration.

As your draft report noted, in the District of Maryland we have a unique situation in that because of the number of federal enclaves in the state, the magistrates in the district are processing more misdemeanors than magistrates in any of the other ten districts

APPENDIX XIV

studied. This has resulted in some specialization by the magistrates and has also brought about a lower civil case output. Such individual variations I am sure could be multiplied by many other examples.

The third recommendation to be made to the Judicial Conference is to "formalize and disseminate to all district courts the criteria used in evaluating and approving applications for new fulltime magistrate positions" and to "encourage those districts with sufficient workloads to request additional magistrate positions."

It is true, I am quite sure, that there is some confusion on the part of individual judges as to the criteria used, which probably stems from the fact that judges have so much written material to review. Actually, the criteria involved are already accessible to every district judge in the country at page 23 of the Judicial Conference Dec. 1981 Report to the Congress on the Federal Magistrates System. To those chief judges like myself who are receiving a copy of your draft report as one of the districts studied, the criteria are again set forth at pages 31-32. Additionally, it is my own personal experience that when approval is sought for new magistrate positions, representatives of the Magistrates Division of the Administrative Office are more than willing to discuss the criteria and their application to a particular district's situation.

Finally, the draft report recommends certain changes if the civil trial provisions of the Magistrate's Act are to be fully effective. Concern is expressed with regard to the provision in 28 U.S.C. § 636(c)(2) which states:

> If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of their right to consent to the exercise of such jurisdiction.

The draft report notes that in two of the jurisdictions studied, the judges believe that the Act's language and specifically the phrase "their right to consent" hinders, or even prohibits, judges assuming jurisdiction over cases in which the parties have consented to a magistrate's jurisdiction. These judges apparently are concerned that they will lose control over individual cases.

In the Feb. 1980 Guidelines to Implement the Federal Magistrates Act of 1979 sent to each district judge, it is commented at pages 12-13:

> Although the statute, at 28 USC §636(c)(2), and the accompanying sectional analysis in the House Report (at page 12), use the term "right" in referring to the decision of the parties to consent to a

APPENDIX XIV

> magistrate's jurisdiction, the term appears to be employed by the drafters to describe what is merely the opportunity of the parties to opt for an authorized alteration in local court procedures. A party's "right" to consent does not imply a coordinate right to demand to proceed before a magistrate rather than a district judge.

The draft report recommends that Congress amend 28 U.S.C. § 636(c)(2) by adding the following:

> The designation of a magistrate to conduct proceedings in a jury or nonjury civil matter under this section shall not preclude the district or judge from exercising jurisdiction over any case for good cause shown on its own motion.

If this provision is intended to require a district court to show good cause any time it decides for any reason not to refer a consent matter to a magistrate, it may well be unnecessary, since it is my understanding that the Judicial Conference intends that the district court retain jurisdiction over its cases and, regardless of the party's consent, that the judge's concurrence is needed before a matter is removed from a judge to a magistrate. If any change in the statutory wording is felt to be necessary, I would support the Judicial Conference's proposed amendment of 28 U.S.C. § 636(c)(2) which reads:

> If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall notify the parties in a civil action of the availability of a magistrate to exercise such jurisdiction.

The other provision of § 636(c)(2) dealt with in the draft report reads:

> Thereafter, neither the district judge nor the magistrate shall attempt to persuade or induce the litigant to consent to the reference of any civil matter to a magistrate.

The draft report notes that involvement by judges in the notification process varies extensively and that there were inconsistent views as to what constituted "persuading and inducing." For that reason, there would seemingly be a sound basis for the position of the draft report that the provision in question should be clarified and that perhaps a position statement by the Judicial Conference would be the best way of illuminating the subject.

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Finally, it is recommended in the draft report that the Conference recommend to the clerks of court methods for notifying litigants of their opportunity to have a magistrate hear their cases and particularly that some procedure be devised for follow-up to remind the parties of the opportunity to consent. This seems to me sufficiently covered by the comment on page 8 of the Guidelines to Implement the Federal Magistrates Act of 1979 where it is stated:

> "While the statute specifically prohibits any judge or magistrate from 'persuading or inducing' the parties into consenting to trial by a magistrate, there is no reason why the parties may not be reminded of their options in a routine manner at later stages of the case, so long as: (1) no pressure is put on the parties; and (2) the exercise of the option by the parties remains purely confidential. Thus, a notice of pretrial or pretrial instructions may routinely remind the parties that they may consider disposition of their case by a magistrate."

I appreciate the opportunity to make these comments about your very thorough report.

Sincerely yours,

Frank A. Kaufman

APPENDIX XV

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS 70130

CHAMBERS OF
FREDERICK J. R. HEEBE
DISTRICT JUDGE

March 28, 1983

Mr. William J. Anderson
Director
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

I have carefully reviewed the General Accounting Office's draft on "Changes Needed to Fully Realize the Benefits of the Magistrate's System" and I concur fully in its contents, its conclusions, and its recommended changes. I also believe that magistrates could make a greater contribution to the U. S. District Courts if they were more fully integrated into the district judicial system. In order to achieve this goal, however, it is absolutely essential that all magistrates possess superior legal ability or else the system becomes fragmentized.

In short, I congratulate your office on a well prepared report.

Sincerely,

Frederick J. R. Heebe

vlh

Chief Judge

APPENDIX XVI

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

OFFICE OF THE
ADMINISTRATIVE ASSISTANT
TO THE CHIEF JUDGE

April 11, 1983

Mr. William J. Anderson
Director, General Government Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

Enclosed please find comments from Judge Oliver Gasch, as requested by Chief Judge Aubrey E. Robinson, Jr., concerning your agency's draft report on the Utilization of United States Magistrates. Judge Gasch is a member of the court's committee on magistrates.

Any inconvenience caused by the delay in obtaining Judge Gasch's comments is regretted.

Sincerely yours,

LeeAnn Flynn
Administrative Assistant
to the Chief Judge

Enclosure

APPENDIX XVI

United States District Court
for the District of Columbia
Washington, D. C. 20001

Chambers of
Oliver Gasch
United States District Judge

March 22, 1983

RECEIVED

MAR 23 1983

CHAMBERS OF
CHIEF JUDGE A. ROBINSON, JR.

MEMORANDUM

TO: Chief Judge Robinson

FROM: Judge Gasch

RE: Draft Report Prepared by GAO Concerning Utilization of U.S. Magistrates

This 42-page draft statement is often repetitious. It does contain, however, some useful suggestions. I have discussed the report both with Mr. Ols of GAO and with Mr. Duane Lee of the Administrative Office Magistrates Division. Mr. Lee, at my request, sent me his analysis of the GAO report. I consider Mr. Lee's report a more comprehensive and useful document.

The GAO report is based upon an analysis of how eleven district courts, including the District of Columbia, have utilized magistrates. Both in the report and in his conversation with me, Mr. Ols had no specific criticism of the practices in this district. Two unidentified districts were criticized and three were singled out for praise. In one of the criticized districts, it appears that some judges were reluctant to authorize trials by magistrates even though counsel for the parties had consented thereto. The assigned reason was that the judges did not wish to lose control over the cases. I told Mr. Ols that it had been brought to the attention of our judges that counsel were able to achieve a continuance after denial by the court of a continuance by the simple expedient of consenting to a trial before the magistrates. This resulted from the fact that the magistrates had no time for trials for several months.

Three districts were singled out for praise by the GAO report--Oregon, Maryland, and Southern California. In Oregon, considerable uniformity has been achieved between the judges and the magistrates so that judges address

magistrates as "judges." It appears that a state judge, a man of considerable experience and ability, was selected to serve as a magistrate. He enjoyed the confidence of the district court judges and the bar. The report indicates that "in 1982 three magistrates in Oregon conducted 42 civil trials, far more than any other district in our review even though the district is smaller than nearly all our selected districts." The report also states that the magistrates are automatically assigned civil matters in the same manner as judges. In Baltimore, a system had to be devised because some of the judges were referring a disproportionate number of cases to the magistrates and that precluded reference by other judges of cases to the magistrates. A limitation of five cases by any one judge resulted. In Southern California magistrates were authorized to perform duties prior to the authorization contained in the 1976 and 1979 amendments. In short, magistrates tried civil cases and handled major pre- and post-trial matters prior to the statutory authorization. The report states that Social Security benefit reviews were no longer referred to magistrates in Southern California for the reason that judges can rule directly on such matters without written decisions whereas magistrates are required to write detailed reports of their findings and recommendations. The report states that judges have two law clerks and magistrates do not. The author of the report might well examine Rule 52 of the Federal Rules of Civil Procedure, which requires judges to make findings and conclusions in all cases tried to the Court. *

In order to achieve the result of having more cases referred to magistrates for trial, the GAO report suggests that there should be a further amendment of the Magistrates Act or a resolution of the Judicial Conference that would require a judge who refuses to refer a case to the magistrates for trial after the parties have consented to state the reasons for his action.

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*GAO note: Report has been revised to reflect this comment. (See p. 27.)

APPENDIX XVI

The report recognizes that neither judges nor magistrates under the present statute may urge counsel to consent to trial before a magistrate. The clerk's notice may inform counsel of this opportunity. The report urges that there be a follow-up by the Clerk's Office, the objective of which is to achieve that which the statute prevents judges and magistrates from doing directly. When this is considered together with the statement that magistrates and their staffs cost approximately one-half the cost of judges and their staffs, one may question the motivation of the report. *

The GAO report recognizes the differences which exist in the problems faced by the various districts. It also recognizes the difference between the problems confronted by the individual judges in a given district. Nevertheless, the report emphasizes the need for what may be termed "controlled uniformity." Mr. Lee's analysis of the report, which he has made available to Judge Otto R. Skopil, Jr., Chairman of the Magistrates Committee of the Judicial Conference, refers specifically to a number of publications made available to district court judges by the Administrative Office in recent years dealing with this subject. These materials contain useful suggestions and criteria. It seems to me, however, that the Magistrates Committee, with the assistance of Mr. Lee's division, could make a very useful contribution to the more effective use of magistrates if it would provide an updated summary for the consideration and utilization of the district judges. With such a summary at hand, individual district courts could more effectively achieve maximum effective utilization of the magistrate's service.

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*GAO note: The point we made on pages 39 to 42 was that by following up on the initial notification to litigants a greater number of litigants are consenting to have their cases heard by a magistrate. We merely stressed that opportunities exist to have more litigants consent to trials by a magistrate.

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